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ABSTRACT

This report presents imaginary dialogues between a management team and an employee team and critiques the dialogues to emphasize the significance of situations and episodes that can hasten or hamper a settlement at the negotiation table. Three critical incidents are studied within each developmental phase of the negotiation process: (1) procedural decisions, (2) preliminary resolutions, (3) substantive determinations, (4) culminating actions, and (5) final settlements. Closing comments discuss competencies that administrators should cultivate. (JF)

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CRITICAL INCIDENTS IN NEGOTIATION

Incidents that occur at the negotiation table—some seemingly insignificant, others of greater moment—may have a critical influence upon the successful negotiation of a contract. They may produce pathways or detours in the negotiation process. Negotiators must be alert to their potentialities.

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FOREWORD

Twenty-eight states, as of the date of this publication, have enacted laws governing collective negotiations in some form. Seventeen of these have separate provisions in their laws for public school teachers. While the span of time during which these enactments occurred was from 1955 to 1971, twenty of the statutes were passed in the decade of the sixties. Other states will join this list.

The realities of collective negotiations, as facts of life in school administration, are well known to hundreds of superintendents and their administrative colleagues. Even in those states where laws have not been passed, many school administrators engage in the process.

Sophistication is the watchword! Negotiators on both sides of the table are becoming increasingly proficient in conducting the negotiation process. This is a desirable development. Negotiation know-how must be deliberately cultivated. Those who represent employee organizations have tended to give a higher priority to skill development in negotiation and have pursued this objective with greater vigor than have management's representatives. The gap is being closed, however.

The American Association of School Administrators has sponsored many activities to promote greater managerial competence in collective negotiation. A 1966 publication and a second in 1968 stressed conceptual knowledge. Seminars sponsored by the AASA National Academy for School Executives have emphasized both information and operational skills in negotiation.

During the sixties, negotiation was stressed in many drive-in conference programs and meetings of state associations of school administrators. The subject has been prominently programed at AASA annual conventions, especially in 1970 and 1971 through Project Negotiation. Video and audio tapes on various aspects of the topic have been produced. This publication is one more contribution to the goal of helping school administrators become more knowledgeable and proficient in this important collective decision-making process.

The purpose in focusing upon critical incidents in the negotiation process is to emphasize the significance of situations and episodes that can arise to hasten or hamper a settlement at the table.

Being aware of pitfalls to avoid and sensing pathways to pursue are equally important.

This publication is not a "cookbook" of negotiation knowledge or knowhow. Rather, it is a volume designed to stress the need for negotiators to probe for those incidents which may contribute to the successful achieving of a contract or block its consummation.

Paul B. Salmon
Executive Secretary

INTRODUCTION

Genesis of *Critical Incidents in Negotiation*

In the summer of 1970 AASA decided to develop a series of video tapes focusing on critical incidents in the process of collective negotiation in school systems for presentation via closed-circuit TV at the 1971 Convention.

The purpose was to enhance the viewer's understanding of the dynamics of negotiation by giving him an observer's seat at the negotiation table. This was to be accomplished by simulating selected incidents. To aid the viewer to reflect upon, assess, and derive working principles from what he had seen, taped critiques would follow the presentation of the simulated incidents. The critiques would consist of dialogue between a school administrator and a teachers' representative, both experienced negotiators.

In order to select incidents which were truly "critical," the members of the Association of Educational Negotiators were asked to identify episodes, actions, or aspects of the negotiation process which can be crucial either to reaching a successful agreement or to the development of an impasse. The incidents they suggested appear in the appendix.

These suggestions were submitted to each member of AASA's professional staff with a request that he designate the ten most appropriate items in order of preference. These designations were the basis of the final selection. The incidents chosen were then grouped by threes, the groupings corresponding to chronological and developmental phases in the negotiation process, as follows:

Procedural Decisions
- Ground rules
- Challenging authority
- Limits of authority

Preliminary Resolutions
- Agenda
- Nonnegotiable items
- Immediate rejection of teachers' demands

Substantive Determinations
- Merit pay
- Binding arbitration
- Personality clash

Culminating Actions
- Keep on negotiating
- Moment of impasse
- Unilateral news release

Final Settlements
"Water cooler diplomacy"
Moment of settlement
Preparation of written agreement

Meanwhile, arrangements had been made with the Montgomery County (Maryland) Public Schools to use their facilities and technical personnel to produce the video tapes and their professional personnel to enact the simulations. The chief negotiator of the Montgomery County Education Association kindly agreed to lend his services. All other members of the two three-man teams and the alternate member were employees of the school system. The administrative "critiquer" was the chief negotiator for the Baltimore County (Maryland) Public Schools; the "critiquer" for the teachers was then head of the Office of Professional Negotiation of the National Education Association. The moderator/announcer was a professional in the communications field.

The AASA and all who benefit from *Critical Incidents in Negotiation* owe a debt of thanks to these technical and professional personnel for their expertise, imagination, and patient, generous cooperation. Special thanks for making it all possible should go to the Montgomery County Board of Education and the superintendent for authorizing use of the school system's facilities and personnel.

The opportunity to produce simulations that closely approximated "the real thing" was enhanced by the fact that the teams had previously participated in actual negotiations with each other. Because of their recent experience in negotiating a liability-insurance item, the teams suggested, and AASA agreed, that one of the incidents selected should be changed to that topic.

The tapes of the simulated incidents were edited to meet time requirements. Each incident, including visuals and the announcer's introduction, was limited to five minutes. As previously planned, the incidents were grouped by threes.

The "critiquers" read scripts, prepared questions to assist the moderator in guiding the dialogue, then viewed the edited tapes of the simulations and went before the cameras. One 15-minute critique was produced for each three incidents, making a total of five half-hour programs which would be meaningful individually or as a series.

The complete series was shown at the 1971 AASA Convention via closed-circuit TV in private hotel rooms on five successive days, one program per day. "Critical Incidents in Negotiation" went on the air at 5 p.m. In addition, programs one, two, and three were shown at a Mini-Clinic as part of Project Negotiation '71, held at midday for three days in Convention Hall. Participants in the Mini-

Clinic viewed a set of incidents and then did their own "critiquing," guided by questions distributed by the clinic manager.

Following the 1971 Convention films were made from the tapes. There is a film for each program now available for purchase or rental from AASA. The films and tapes are also being used by AASA's professional staff in their assignments at seminars and conferences around the country.

Finally, AASA decided to make the content of "Critical Incidents in Negotiation" available to more people at lower cost by producing this publication. To meet the requirement of readability, as opposed to "viewability," additional editing has been done. A chapter of commentary has also been added.

It is hoped that the reader will find this publication useful as a supplement to viewing the programs, should he or she have occasion to do so, and intrinsically valuable as an opportunity to capture and hold the dynamics of negotiation for examination and reflection.

ACKNOWLEDGMENTS

The American Association of School Administrators gladly acknowledges the debt of gratitude it owes to the following people who freely gave their time, effort, and expertise to the production of the video tapes on "Critical Incidents in Negotiation." Without their help, the project could not have been successfully realized.

The Montgomery County (Maryland) Board of Education and Dr. Homer Elseroad, superintendent, for their kind permission to use the school system's personnel and audiovisual facilities to produce the tapes.

Team Members in the Simulations:

For the board and administration

Dr. Gordon F. Anderson, assistant superintendent for personnel
Robert G. Cooney, staff member
Leon W. Stafford, staff member
James H. Larson, staff member, substituing for Mr. Stafford
all of the Montgomery County Public Schools, Rockville, Maryland

For the employee association

John P. Fiscella, employe relations director, Montgomery County (Maryland) Education Association
John A. Canning, staff member
Harry R. Huffer, staff member
both of the Montgomery County Public Schools, Rockville, Maryland

Critiquers:

For the board and administration

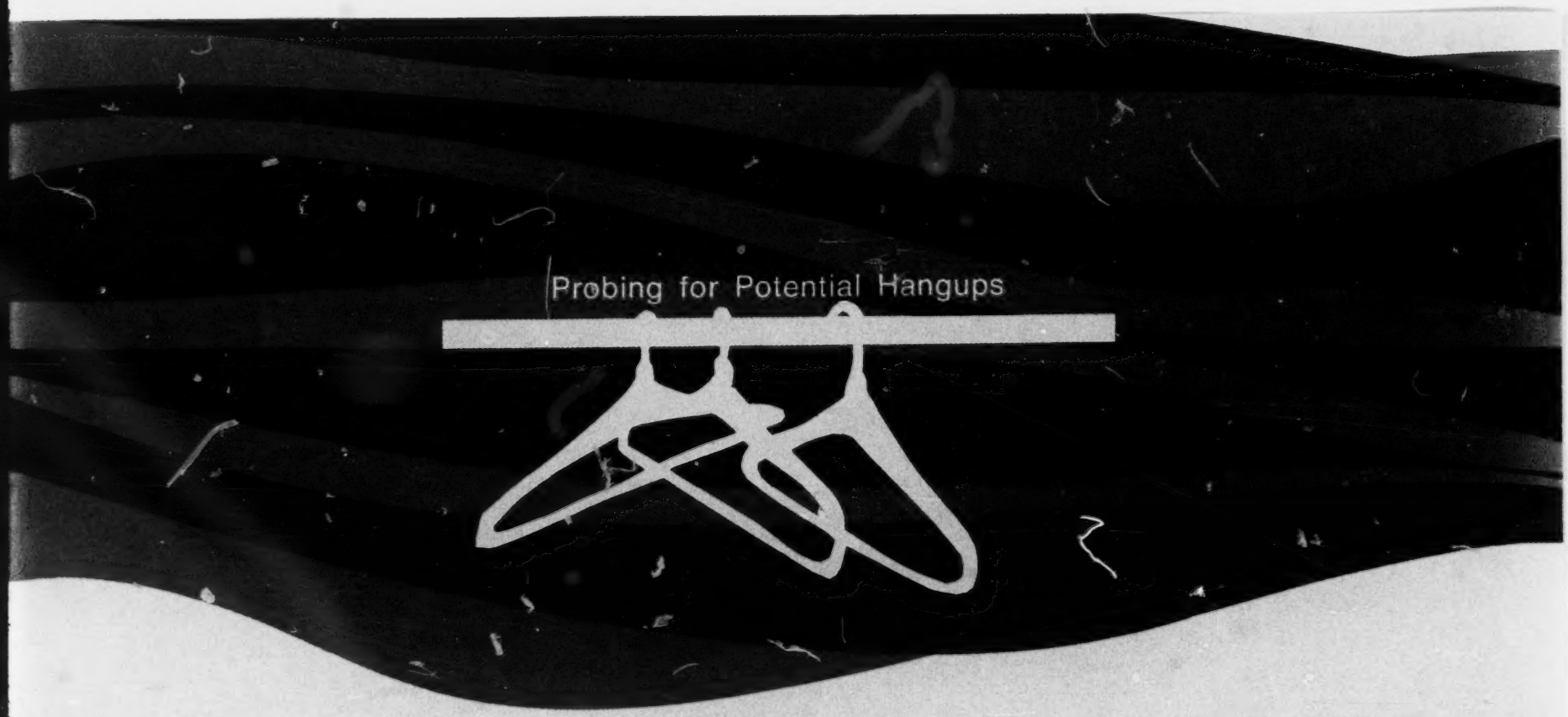
Robert Y. Dubel, assistant superintendent for staff and community relations, Baltimore County Schools, Towson, Maryland

For the employee association

William E. Stiles, Jr., formerly director, Office of Professional Negotiation, Affiliate Services Section, Division of Field Services, National Education Association, Washington, D.C.; presently director of labor-management relations, Office of the Assistant Executive Secretary for Personnel and Special Services, National Education Association, Washington, D.C.

Harry Swope, TV program director, and *Don Smith*, assistant TV program director, and other technical personnel of Television Services, Montgomery County Public Schools, Rockville, Maryland.

The Association of Educational Negotiators, 1835 K Street, N.W., Washington, D.C., for its membership's suggestions of critical incidents suitable for simulation.



— Episode 1 —
"GROUND RULES"

"Ground rules" for conducting negotiations are important to a successful outcome. Getting into a hassle about the number and nature of these guidelines, as in this episode, illustrates how negotiation is regulated by mutually agreed upon "ground rules."

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ■
You know, John, I have been looking at the ground rules you revised for us, and I find your revisions acceptable for the most part. However, I am sure you understand that we are negotiating and that we don't want to negotiate out in public, as I think you are proposing.

You indicate that press releases ought to be unilateral. I am suggesting that this would be most devastating. It would make it impossible to operate. I thought we had an agreement; I am sorry that you did not understand. I thought we had an agreement that we would mutually agree to the press releases and would, as a consequence, be able to come together the next day without having the public breathe down our necks. I regret that you had to take this initiative.

CHR: ◆
I am sorry that you regret . . .

CHR: ■
I am not through yet, John.

CHR: ◆
Well, you have already made your point. The point is, you want to muzzle us. You want to gag us. You don't want to let us communicate with our members.

CHR: ■
I am not sure you can call it a "gag," because we are just as interested in putting out the truth as you are. But a unilateral press release cannot necessarily be called the truth all the time.

CHR: ◆
We have tried to communicate with our members. We have a vast audience anxious to know what is going on between our team and yours. The only really effective way to communicate on an instantaneous basis is the newspaper.

If you are going to characterize our press releases as not being the truth, that's for you to say. I'll tell you that we'll call them as we see them.

For crying out loud—there have been a lot of wars fought over the freedom of speech and the right to review actions of the government. You happen to be a government agency, and we want to have the government in the sunshine. We are not allowing any "gag rule" that will prevent us from communicating with our members and telling them how we feel about a certain set of circumstances.

MBR 1: ◆
Not only that. I think the local newspaper has just come out with a thing that they really could take us to task . . .

CHR: ■
I know that two of you gentlemen have the same name. Is he talking for you?

CHR: ◆
At times John is authorized to speak for the teachers, yes.

CHR: ■
It's all right, then, if Bob and Leon talk about this, too?

CHR: ◆
If they have anything worthwhile to contribute occasionally, I'd be glad to hear from them.

CHR: ■
I'd like to go back to the freedom of speech issue. I'm just a little bit upset by the innuendo that we are not in favor of it. We want just as much sunshine in the operation as you do. But if we have to come back to the next meeting all burned up because you have sliced the bacon just a little differently than we have been discussing and we issue a controversial press release different from yours, it would seem to me that we cannot come to agreement.

You know we have gotten through this ground rule structure with a great deal of acceptance by both sides. I'm pleased with what you have accepted of ours. I just can't understand why you have to say that you're going to go out and attempt to get a ground swell of public noise. This will cause the Board of Education and superintendent to come screaming in saying, "What are you guys doing?"

CHR: ◆
But you're the one who is insisting on ground rules. All I'm insisting on is that the ground rules be equitable. You've got the public relations firm that works for the school district. We can only depend upon free coverage by the press.

Almost 70 percent of the local tax dollar is going into this operation. Consequently, the people and the teachers have the right to know where we are in the discussions, what we're discussing, and general agreements we have reached.

I would propose that we have no ground rules, if arguing over ground rules is going to prevent us from reaching an agreement.

CHR: ■
I can't agree with that. I think that having no ground rules would just be sticking us right out in front of everybody and giving us clubs. We'll beat each other on the head.

CHR: ◆
The more rules there are the more things people can be accused of.

CHR: ■
We don't have many rules.

CHR: ◆
We only need one rule and that's when we'll meet next. That's about the only rule I've ever needed to reach an agreement with people who are reasonable.

Probing for Potential Hangups

— Episode 2 —

WHO REPRESENTS WHOM?

Problems sometimes develop when the right of the chief spokesman of a team to speak for the body he represents is questioned. This episode demonstrates what can result when this happens.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ◆
We have met once or twice informally. Since we are going to start on the formal part of our negotiations, I would appreciate your showing me some authorization from the Board of Education for you to speak for them, because . . .

CHR: ■
Authorization?

CHR: ◆
That's right. We would like to see whether or not the people sitting there truly represent the Board of Education.

And, in an effort to clarify our role, I would like to submit this letter of authorization from the president of the Association to the president of the Board and the superintendent indicating that the people here assembled have the authority to represent and enter into a tentative agreement for the teachers of this country.

CHR: ■
As far as I can see, this is an extra piece of paper. You are always telling us we have too much paper. We know your assistant, John, and we know your assistant, Harry, and we know who you are, John. We have been around you a long time. We thank you for the information.

CHR: ◆
There are so few representatives of the Association that you have to know and whose authority you have to understand the limits of. But this central office is just catacombed with offices with everybody purporting to be the boss. All we want to know is, "Do the three people here assembled at least have the title of 'boss' for a short period of time during negotiations?"

CHR: ■
This is my assistant, Leon, and I am the chairman, and this is my assistant, Bob. We are the team, John.

CHR: ◆
By whose authority? That's all I am asking you. Did the superintendent appoint you? We are representing member teachers and you are representing the Board of Education, not the superintendent. If they couldn't find anything better for you to do today and sent you down here, that's one thing. But, if you are true representatives, we want to talk to you as true representatives.

CHR: ■
Well, we accept your letter and thank you very much for it. The superintendent has appointed us. He has the authority to do so as the Board's representative.

The state law tells us this and he has done so. I think we should get on with . . .

CHR: ◆
What does the state law tell you—that any three people the superintendent knights or dubs in some way can represent the Board of Education? I thought the Board of Education had something to say about that. It says that the employee unit shall be selected after the Board of Education has selected its unit, but it doesn't say anything about who authorizes whom to come and represent the Board.

I want the Board of Education to tell me officially that the people I am talking to represent them. Then, if we get mad at somebody, we will know at whom we are getting mad; we are getting mad at the Board. From now on, you are not yourself personally. You are Mr. Board Representative as far as the teachers are concerned.

CHR: ■
Let me propose that the superintendent is the executive officer of the Board of Education by law. He represents the Board. I am sure you recognize that, John. You ought to go read the law again.

He has appointed this team, suggested that I be the spokesman for it and . . .

CHR: ◆
What we discuss, though, in the next couple of weeks will be, I hope, bilaterally developed policy. Only the Board of Education has the authority under law to decide policy, not the superintendent. He can recommend. I am asking whether the people that the Board sends here have the authority to tentatively agree to policy change or policy alteration, not simply to some sort of procedural change.

CHR: ■
What's this bilateral formulation of policy that you are talking about?

CHR: ◆
That's exactly what will result in the discussions we have. Everything we agree on will be adopted by the Board of Education as policy. It will be bilaterally developed and bilaterally ratified. Consequently, we feel we will have had some input into the policy-making powers of the Board of Education.

CHR: ■
Everything in the agreement will become policy. I agree with that.

CHR: ◆
So the superintendent doesn't set policy. He implements.

CHR: ■
We quite agree that the Board of Education is running the school system. That is the position we want to maintain.

CHR: ◆
Okay, let's have the Board say to us officially . . .

CHR: ■
You mean you want a piece of paper?

CHR: ◆
I want a letter. The point is, Is it so much to ask for a recognition letter?

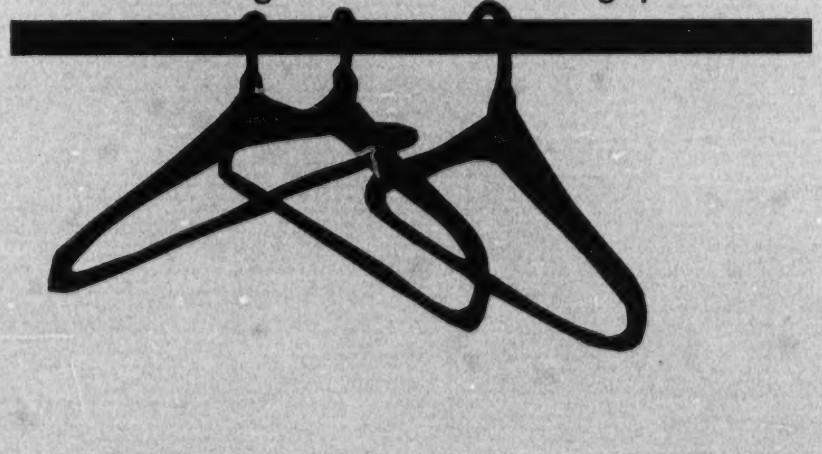
CHR: ■
It's just a big waste of time.

MBR 2: ◆
You may consider it a waste of time, but our members do not consider it a waste of time. They want to know officially who is representing the Board of Education. They want to know, when you sign a tentative agreement, that that is just what it is, that we can reasonably rely upon the validity of the signature on that agreement.

CHR: ■
You are challenging our right, then, to be at this table?

CHR: ◆
That's right. At this moment we are. We have given you our authority, and we are asking you to reciprocate.

Probing for Potential Hangups



— Episode 3 —

LIMITS OF AUTHORITY

Arguments may occur when the limits of the authority granted to negotiation teams are unclear. It is essential that these limits be clarified, as this episode illustrates.

MANAGEMENT TEAM ■ ◆ EMPLOYEE TEAM

CHR: ■
We've had some exchange on the rules and regulations that run a school system, the policies and procedures outside the agreement. We understand perfectly that what we agree on when we finally concur will become policy. But, you know, we've got two big books of policy that has been developed over the last fifty years here and has governed our schools. We give the teachers lots of leave and all sorts of privileges. It's all in the policy.

We've come up with wording—somebody calls it a "zipper clause"—that we think is beneficial to the teachers. It assures them that the policies we have will continue, if we forget something here. I'd just like to read the wording and to know if you have any questions about it. We've given you copies of this.

"This agreement incorporates the entire understanding of the parties on all matters which were or could have been subject to negotiations. During the term of this agreement, neither party will be required to negotiate with respect to any matters, whether or not covered by this agreement or whether or not within the knowledge or contemplation of either or both parties at the time they negotiated or executed this agreement."

CHR: ◆
Well, I read, you know, very well, too, Doctor. I understand the words but I don't know what they mean.

CHR: ■
Well, basically, we have policies and procedures. We are now in a situation where we are going to rewrite some of them, add some, and then say, "Okay, the Board of Education will accept these as policies and procedures."

When we are through, everybody is secure. We know that the policies and procedures are going to continue and that we haven't forgotten anything. Or, if we have forgotten something, we accept the fact that we have agreed not to come running back. We probably can mutually reopen negotiations, but no one person can say you're doing something wrong.

It is our intent by this clause to say that what we have done is *all* that we have done and that finished it. We can sign the agreement and our Board of Education will stand by it.

CHR: ◆
Well, the way you explain it is one way; the way it hits me first is another. I'd like to have time to take it to our attorneys for reaction. I'd like to have time for the leaders in this association to read it and digest it.

It seems to me it would be a very significant clause in the agreement and might backfire at some subsequent time. And, really, I don't have the authority to enter into so binding a clause.

MBR 1: ◘
John, last time we spent twenty or twenty-five minutes talking about authority. You gave us a letter telling us all about your authority. You insisted we give you a letter. And now you say you want to go back and talk to the membership about something you apparently don't have the authority to agree to.

CHR: ◆
Bargaining is a new game for teachers. They haven't really released the authority they feel is now theirs as the result of an election. And I don't know . . .

John, would the principals give us that kind of . . .

MBR 1: ◆
I think that bargaining is a very new game for administrators, too. Personally, I wouldn't even begin to feel that I was competent to advise John as to what position to take on this.

MBR 1: ◘
What was the insistence upon this letter last time? Insistence that you had the authority to do this, to do that?

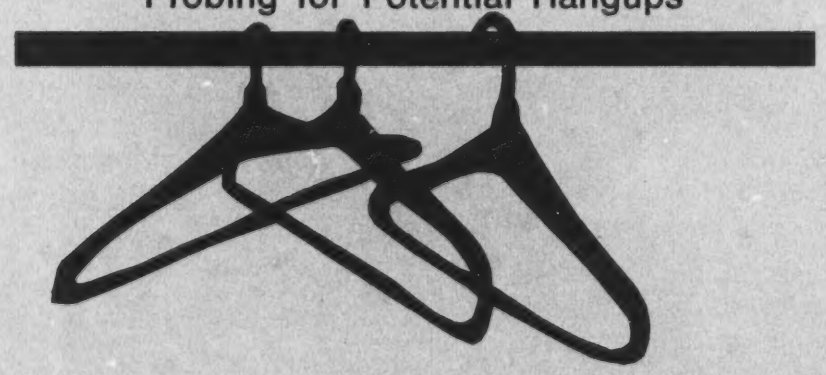
CHR: ◆
Are you trying to railroad us, Bob? Are you trying . . .

MBR 1: ◘
I think perhaps you're stalling on this point.

MBR 2: ◆
What would the teachers say if we signed this? We represent six thousand teachers here. It's a new game for them, a new ball game altogether. They're a little apprehensive about this new procedure.

In the past it's been a paternalistic type of operation. The Board of Education has seen fit to give us a certain salary structure, to provide for us a number of classrooms, to provide for us those materials that we need in those classrooms. The whole gamut of negotiations is new. I don't think that we could sit here and speak for six thousand minds, because we might get six thousand different opinions.

Probing for Potential Hangups



— Episodes 1, 2, and 3 —

The critical incidents in the program Probing for Potential Hangups are analyzed by a representative for management and a representative for education associations. A school administrator explores the implications of these incidents from the point of view of the board of education and administration. A teachers' representative analyzes them from the viewpoint of teachers.

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CR = "CRITIQUER" ▣ MANAGEMENT
CR = "CRITIQUER" ◇ EDUCATION ASSOCIATION

MODERATOR:
I thought we could begin with the area of ground rules. Are they really necessary? Do they hinder or expedite the negotiation process?

CR: ◇
Well, of course, a minimum number of ground rules is necessary. You have to establish how you are going to notify the parties that demands are being made and you wish to reopen negotiations. You have to set up the first meeting and that sort of thing.

But beyond that, I feel that getting too involved in the ground rules stifles negotiation. In the negotiation process you have two parties meeting as equals. In a sense, you have two individuals. If you have two individuals talking to each other, you don't need a chairman to call the meeting to order, to adjourn the meeting, and to recognize speakers. Meeting as individuals and equals is the kind of process which should be going on in order to reach an agreement easily and as quickly as possible. Ground rules stifle this kind of thing.

MODERATOR:
Bob, would you agree?

CR: ▣
Well, I think ground rules are absolutely necessary. They bring order to the process; they bring stability to the dialogue. I would agree with Bill that they should be kept to a minimum. We might have quite a disagreement, however, as to what is minimal.

I think ground rules basically can be a tremendous time-saver. I have heard of many negotiating situations where the teams literally spent days and days arguing about how to negotiate and what the rules would be, because they weren't spelled out and agreed to beforehand. And it seemed to take the teams forever before they got to the heart of what they wanted to negotiate.

So, I think you have to have ground rules. I would agree that they have to be kept to a minimum, and certain things Bill mentioned should obviously be in the ground rules, such as when you begin. I would include the general format of presentations, who makes the offer, when the counteroffer is made—this type of thing. But, certainly, not what size of room. Agreeing upon the chairman is also important, because you have to learn to work together.

MODERATOR:
Would you say that ground rules should be established before the first meeting?

CR: ▣
Yes. I think it's very important to have an understand-

ing which will carry on from one year to the next, particularly when one or the other of the chief negotiators is new to the situation or the particular school system or that particular negotiating table. Then, even in preparing for the negotiation table, you know about the rules under which you are going to operate.

This doesn't mean that the rules can't be changed from year to year. And, as the negotiators get to know each other, they're going to need fewer rules.

CR:◇
I'd like to ask if Bob thinks firm rules are needed concerning the times meetings will open, the times they will close, whether or not items can be brought up which are not placed on the agenda at the previous meeting, and this sort of thing. Would you go that far?

CR:▣
No. I wouldn't go as far as the times when meetings are to begin. I am merely interested in when the entire negotiating begins. For example, by the first of October, the first of November, depending on your budgetary situation within the school system, the association has to submit its requests or demands. Then, within a specific period—and this is important from the association's point of view—the board must respond to these particular demands.

As a person who is very much interested in the budgetary process, I think another quite critical rule is a deadline for completion of negotiations.

CR:◇
I would hope this would be a real deadline, though, made necessary by a budget deadline. I've seen too many instances where an artificial deadline has been set up by people who decide ahead of time that a sufficient period of time should have elapsed by a certain date. Then, regardless of anything else that occurs, if they're not in agreement at that time, everything goes out the window and they declare an impasse. This thwarts the negotiating process.

CR:▣
I would agree. The representatives of all the associations I know are sophisticated enough to know what a real deadline is. They wouldn't agree to it unless the team for the board could justify such a deadline by a statutory limitation on budgetary consideration or some such thing.

MODERATOR:
You don't feel that that artificial deadline of which you spoke would be of value in speeding up the process and in doing away with procrastination?

CR:◇
No, I really don't. On the face of it, it would seem that

it would. A goal is a good thing to have, simply to shoot for.

But, in actual practice, you find, all too often, that when you're at the date set as the goal, you simply call everything off and stop negotiationg, despite the fact that only a few items are left to talk about or a great number that may fall into place very rapidly.

MODERATOR:
We saw a situation here where the authority of the chief negotiator was challenged. What can be gained by challenging the authority of the chief negotiator on the other side?

CR: ▣
Very little, I think, unless your objective is to destroy the other chief negotiator. And I've never been in a situation where this was desirable or even thinkable.

I think you create a situation where you can find ways to let him save face if you have succeeded in destroying some of his authority or semblance of authority. You can find out very quickly just how much authority he has without embarrassing him before his team. Then, you make your plans and strategy accordingly.

CR:◇
I would agree that demanding a written affidavit declaring that this man truly represents the board is going a little far.

On the other hand, in some other ways you must establish the authority of the people that are negotiating. Again, in actual practice, I have run into instances where the people representing the board at the table, or ostensible representing the board at the table, did not truly speak for them. We've run into a great deal of difficulty. We've reached tentative agreement on several items on one day, and the next day we find that the other team has to retract those agreements.

MODERATOR:
This was something that came up after you were in negotiation? A rude awakening?

CR:◇
That's right. We took the man at his word. And I'm sure he believed he did have the authority, but the school board proved him wrong. In a case of that kind, the only thing the teachers' association can do is to challenge his authority, really make a case of it, so that he must go back to the board and establish the fact that he's negotiating for them. Otherwise, the whole thing becomes a waste of time, a farce.

MODERATOR:
It seems important, then, to give the negotiators on both sides as much authority as possible in order to expedite the process.

CR: ◇
Right.

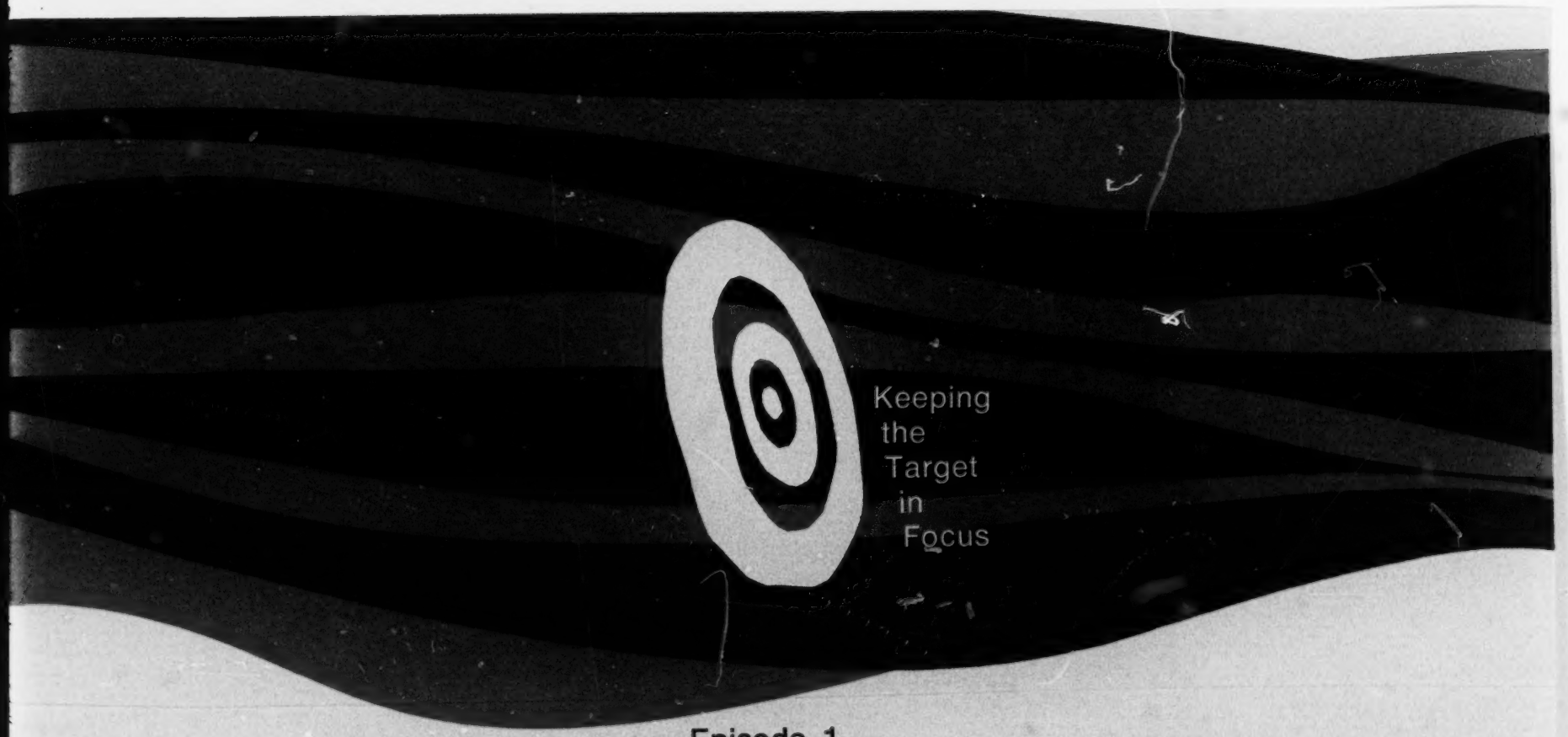
MODERATOR:
Were the parties here discussing the question of authority to negotiate really, or was something else involved?

CR: ◇
In the last incident they were talking about something called a "zipper clause." This is a relatively common clause, and we could spend a great deal of time debating its merits.

However, I believe we are really discussing the right of a negotiating team to retire to discuss with its constituency, if you will, any new items that have come up at the negotiating table, anything that's unexpected. After all, these people are representing a constituency. If they feel they must have direction before they can go on, they should be allowed to get that direction.

CR: ▣
I think what you have to determine is whether any given statement at any given time is for real or whether the negotiator for the other side has a problem with his team or with his constituency. There are certain things that he may say in condemning the board or past practices. He may merely be playing a role at the moment to achieve some rapport within his own organization. It just doesn't pay to get too excited about this type of behavior too soon.

MODERATOR:
I think that we have really just scratched the surface. But our time has run out. I want to thank you both.



— Episode 1 —

THE AGENDA

The last three episodes probed some potential hang-ups in the negotiating process. This series explores incidents that can divert negotiators from getting on with the "business" for which the teams have been convened. The "agenda" can be a troublesome topic, as the first episode shows.

MANAGEMENT TEAM ■ ◆EMPLOYEE TEAM

CHR:◆
Harry, could I have that article we wrote last night?

Doctor, with your permission I would like to offer an article that is not on the agenda for today but has, we feel, a great deal of relevancy to our discussion.

CHR: ■
It's not on the agenda?

CHR:◆
That's right. We feel that something has occurred just recently which would probably be very relevant to talk about at this time.

Gentlemen, if you please, give this to the Doctor.

As you probably know, there's a school . . .

CHR: ■
Could I interrupt a minute, John? We haven't seen this before, have we?

CHR:◆
No, sir.

CHR: ■
It's not on the agenda?

CHR:◆
That's right, sir.

CHR: ■
Here's our agreement. You recognize our present agreement?

CHR:◆
Let the record show we recognize our agreement, yes.

CHR: ■
Well, it says in Article 3C that the agenda for each meeting will be developed at the previous meeting, that no parties will introduce any additional material unless it is mutually agreed upon, and . . .

CHR:◆
We're moving to suspend the rules. That's what we're doing. In other words, something has occurred that we think would be very relevant to discuss at this time, since everybody is emotionally involved in it at this moment. Possibly some good conversation and dialogue could come out of discussion of this matter.

CHR: ■
Let's just go away from the negotiating table and go get a cup of coffee, if you want to talk about this in a friendly fashion. It's not a matter of negotiation and . . .

CHR:◆
All we're seeking is to provide an optimal learning environment. Unfortunately, there is no policy currently on the books to cover exigencies such as arose yesterday when the temperature in some classrooms was 100-110 degrees.

John, I'm sure you, as a principal, have some observations on this.

MBR 1:◆
I sure do. I . . .

CHR: ■
I have to protest. We need to go on to the articles on the agenda. We have two more items we haven't completed yet.

MBR 1:◆
I thing it's really incongruous that the Humane Society has been instrumental in getting an ordinance passed which makes it unlawful for pet shops to have their pets—dumb animals—caged in premises where the temperature goes above 74 degrees.

CHR: ■
I am perfectly happy to listen to your position about teachers, but we're not going to negotiate about animals.

MBR 1:◆
All right. I think it is very significant that it's quite all right for dumb animals to be operating in a temperature of 74 degrees and teachers operating in a temperature of 110 degrees. Is this what you're saying? You don't want to talk about this?

CHR:◆
I'll do you a favor, Doctor. Read the thing, see if it's not meaningful, make some response, and we'll move on. This blind adherence to ground rules, to agenda, only limits and structures what should be a free interchange of ideas and expressions of concern for the teachers and children.

CHR: ■
We need, and we agreed to have, an orderly negotiations process. We even got a couple of things agreed upon. And we proceeded . . .

CHR:◆
We won't make that mistake again, unless we are given the opportunity to sometimes present something out of order. We are asking for a suspension of whatever rules were agreed to last year.

MBR 2:◆
I think this is something unforeseen. We hadn't expected to bring it up, but we feel this table is the proper place to bring it up.

CHR: ■
You know, if we are going to follow an orderly negotiations procedure and conduct an orderly development of an agreement, as we have done in the past, why don't you introduce it next week?

MBR 2: ◆
Are you so rigid that we can't insert some flexibility into this process?

CHR: ■
I don't think that I'm inflexible, Harry.

MBR 2: ◆
Do you have to go by the book?

CHR: ■
I think we need to be just as prepared as you are in order to have a developmental process of getting a job done. I will be glad to accept this piece of paper, if you want to put it on the agenda for next week. Otherwise, we've nothing to talk about.

CHR: ◆
I think you're missing a great opportunity, Doctor, for a little positive public relations for the Board of Education. If we could announce tonight, for instance, that we've reached tentative agreement on a problem of heat and humidity that really severely handicapped children and teachers yesterday in the classrooms, the public and the teachers would at least know that we are talking about meaningful material at this table—not necessarily only wages, hours, and fringe benefits. I think it would be to the credit of the Board to start discussing with meaningfulness this particular item at this particular moment.

CHR: ■
All I'm asking, John, is that you put it on next week's agenda. We can't sit here and read this kind of stuff you've given us—one, two, three pages. It's double spaced. But it isn't going to get us . . .

CHR: ◆
It's clear, concise, in plain simple words, asking for a little consideration.

CHR: ■
We'll consider the proposal.

Keeping
the
Target
in
Focus

— Episode 2 —

NON NEGOTIABLE ITEMS

A perennial problem in negotiating is arguing about what's negotiable. These disputes may get negotiators off target early in the process. This episode demonstrates this risk.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ■
We appreciate your returning the program we suggested for liability insurance. I know you understand that the Board of Education is very realistically accepting the teachers' presentation that we ought to take some responsibility, although the law says we're otherwise set up.

However, I don't think we ought to consider this any further. We will take this to the Board and to our insurance people and have them evaluate it. We'll use it as input. I appreciate the input you've been willing to give to this material.

CHR: ◆
You mean to tell us, then, in simple language, cutting away all the flowery phrases, that it's nonnegotiable.

CHR: ■
Negotiation is a very precise thing. Very realistically, you need to discuss the things that each party agrees ought to be discussed. I'm sure you understand that everything can't be put on the table, but only—according to the law—a very limited number of things in terms of salary, wages, hours, and working conditions.

I don't think protection like this liability insurance can be among them. We'll have our teachers running all over the place with their understanding of this. The Board of Education can't accept this.

CHR: ◆
The Board of Education cannot accept the responsibility for its agents? The Board of Education places them in precarious positions and liability-loaded situations, and now you're telling us they can't accept the liability insurance that is a meaningful working condition?

How can a person perform with any degree of freedom and relaxation, if he's always worried that he may lose his home or his car or his boat or whatever other possessions he has been able to accumulate on the meager wages you pay here?

CHR: ■
At your request we told you what the Board of Education was going to do. It's going to have a liability policy. It's going to set up . . .

CHR: ◆
It's negotiable. We will not accept unilaterally developed policies in the area of insurance, because it's definitely a working condition.

CHR: ■
Leon, would you tell the employee team's chairman about the law?

Leon is our insurance expert. He has been looking at this with our insurance department. We reviewed this very carefully. It's good input.

MBR 2: ◘
John, we don't feel that your proposal is really negotiable. We gather from what you have here that you're trying to get the teachers under an umbrella. This could be very dangerous to a lot of us. If some teachers believe that they suddenly have carte blanche to do just what they want to do, the Board of Education saving them harmless from any suit filed by the parents of the kids involved, this would be dangerous to the teaching profession.

In addition, it would be a very costly item if neglect, as you are apparently saying, would not have to be proved in case of a suit by a parent against a teacher. We don't want to enter into any sort of agreement whereby we would permit the Board of Education to be placed in the position you describe in this document.

As our chairman indicated, we will have liability insurance, but it will only cover teachers in terms of performance of their duties, not on the terms you have in this proposal.

CHR: ■
We just can't talk about this. The Board of Education has a whole mass of rules and regulations needed to run a school system. We started out sharing these with the teachers, and we have given our professional staff, *all* our staff, a good deal of protection and concern.

I believe you must recognize that you can't bring to the table anything you please.

CHR: ◆
You're talking about . . .

CHR: ■
Would you mind not interrupting.

CHR: ◆
You're butting in. In fact, you're not even talking to the point. You're talking about the Board's unilaterally developing a set of policies over a long history of unilateral rule. I'm saying that now the ball game is changed. Things that will affect the terms and conditions of employment are negotiable.

MBR 2: ◘
John, I think that's where you make your mistake. I think this term "working condition" really encompasses every facet of anything that the Association . . .

CHR: ◆
I am so happy that you prefaced your remark by saying

"you think." I have yet to see anything that tells me that my assumption is incorrect.

MBR 2: ◆
"Ordinary performance of duty." We're not asking for "after school" or "uptown" or what have you.

MBR 2: ▣
You're asking us to save teachers harmless if they want to clobber a kid because they don't like the way his hair is parted that day. We're saying that we're not going to provide insurance to cover things such as that.

CHR: ◆
Why don't you offer us a counterproposal?

MBR 2: ▣
We say that it's nonnegotiable.

CHR: ◆
We can't accept that. That's why I don't want to fight about the specifics of the proposal until you tell me we're negotiating it, rather than just giving me a gut reaction to it. It's negotiable.

Keeping
the
Target
in
Focus

— Episode 3 —

IMMEDIATE REJECTION OF TEACHERS' DEMANDS

When excessive and unrealistic demands are made by the team representing the teachers' organization, the other team may be tempted to reject them immediately. The consequences of this abrupt action are portrayed in this episode.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ■
You know, I don't like to say things are ridiculous because I think you try. But isn't this ridiculous? You want us to pay for all the Social Security. You want us to pay for all the retirement. You want us to pay for all the insurance. And I'll be damned if you don't want us to pay for the dues of all those members of your Association.

If you want me to put this down on a level of saying that you want to do nothing and get everything, I think the presentation has done this.

CHR: ◆
It is the American dream of a shorter workweek, more money, less responsibility.

CHR: ■
The workweek you have proposed is a 30-hour workweek. I do not understand how you think you can say that taxpayers are going to provide a 30-hour workweek for teachers when they are handling children whom we want to give *more* education. Your proposition is that we hire fifteen percent more teachers to take care of the decrease in the number of hours.

CHR: ◆
Are you finished? We want it. We understand exactly what's in there. You don't have to recap it for us. You don't have to give us highlights of our own presentation.

We know exactly the fiscal impact, exactly the lessening of the Board's authority. We understand completely the impact it's going to have on kids. We're saying that this is what the teachers want and need.

CHR: ■
Thank you for the . . .

CHR: ◆
We will be happy to take any response you have back to the teachers.

CHR: ■
I'm glad that you will be happy to do so, because I am sure they will recognize that you can't get more money for less work in every circumstance. Productivity is the measure you have to apply.

CHR: ◆
You cannot apply that measure to education. You're always talking to your Board of Education about quality, not quantity. All we're saying is that quality can be improved, if you make the job more realistic and you eliminate . . .

CHR: ■
Realistic?

CHR: ◆
Teachers have to moonlight to make ends meet.

CHR: ■
You have asked that the teachers be paid to go on sabbatical leave every three years.

CHR: ◆
If it improves the quality of the service upon their return, I think it is a meaningful demand.

CHR: ■
If we had some research that could back this up, we think it *might* be meaningful.

CHR: ◆
If you can show me research to prove the opposite, I will be glad to entertain it.

CHR: ■
I don't want to argue with you.

CHR: ◆
Well, you're doing a good job of setting the stage.

CHR: ■
You have given us your proposition. I have the opportunity, I hope, to react to it for the Board of Education.

CHR: ◆
Fine.

CHR: ■
We would like to present this to you and say: "Why don't you take this fine document back and revise it. We suggest that you cut it down ninety percent. Then, it will probably have some acceptance."

CHR: ◆
Your lousy editing will take place in your office, if you don't mind, Doctor. That is the purpose of negotiations.

CHR: ■
I don't think I dare take this up with . . .

CHR: ◆
You edit it. You cut it. You amend it, and then we will react to those red pencil items.

CHR: ■
The Association and the Board of Education have had amiable relationships over a number of years and have come to agreement. But *never* have we come up with anything like this!

Keeping the Target in Focus
— Episodes 1, 2, and 3 —

The critical incidents in the program Keeping the Target in Focus are analyzed by a representative for management and a representative for education associations. A school administrator explores the implications of these incidents from the point of view of the board of education and administration. A teachers' representative analyzes them from the viewpoint of teachers.

CR = "CRITIQUER" ▣ MANAGEMENT
CR = "CRITIQUER" ◇ EDUCATION ASSOCIATION

MODERATOR:
Gentlemen, as we can see, the negotiation process can run into difficulties in a number of ways. With reference to the first incident, is it important to prepare and adhere to an agenda at each bargaining session?

CR: ▣
No. I don't think we should be very formal about this. The whole process of negotiations is evolutionary. It is not a play where you are working according to a certain script. Certain things develop naturally during the course of negotiations which call for a change in strategy on both parts.

I think if you're stuck with a very rigid, written, formal agenda, it can work against you as often as it will work for you. One thing leads to another, and you'd better have a little bit of flexibility.

You might want to test out with each other some of the things you would both like to attempt to cover during the session and come to an informal agreement on where you want to go. But a written agenda, I would say no.

CR: ◇
I would have to agree with that. It may be necessary, and it frequently is, when complicated issues or financial questions are to be discussed, that you establish a plan to talk about those issues at the next meeting. People can come prepared.

But to bind yourself into a pattern that allows for no deviation can only interfere with the negotiating process. I think the first incident had a very good example of this. It would have been much better to go with the things that were important to the people at the table at the time, than to let those things interfere with the process of bargaining that had been, hopefully, taking place up to that time.

MODERATOR:
Very often you can't tell in advance just what your stumbling blocks are going to be.

CR: ◇
That's right. Very often when you are bargaining on an item, you'll see that by leaping to a seemingly unrelated item, making a compromise on it or making a demand to increase it, you may be able to achieve a solution on the issue you started with.

MODERATOR:
Let's talk about the problem that came up in episode number two regarding liability insurance. Is liability insurance a working condition?

I would say definitely yes. As much as hospitalization insurance. It's tied in with work people are doing. It's a matter of concern to them that affects their morale. It may even affect the way in which they teach. Liability insurance certainly is a working condition.

MODERATOR:
Do you agree, Bob?

CR: ▣
You have to interpret this in terms of where you're negotiating, under which state statute you're negotiating. Now, if the state statute spells out that you are to negotiate working conditions, I would be inclined to agree that this is the type of thing that affects teachers' working conditions and, therefore, is negotiable.

The big question here is really how you decide what is negotiable. You can't do this unilaterally. You have to try to agree upon what you will discuss and what you will negotiate.

There will come times when the association will adopt the traditional stance that almost everything is negotiable. And the traditional stance of the board will be to make it as narrow as possible. When you have such a hangup, eventually somebody else will decide: the state board of education will make a ruling, a court will decide, or an attorney general.

CR: ◇
I think, in the absence of a clearly defined state statute or some kind of regulation governing the fact of what is or is not negotiable, that this issue should be ironed out at the table between the parties. For one side to say unilaterally, in the absence of any outside authority such as a state statute, that something is not negotiable may be quite contrary to good faith bargaining.

It is not necessary for that party to agree. You can compromise on an issue. But I think it's wise for the parties always to discuss these issues and decide where they're going to go from there.

MODERATOR:
Bob saw in the evolution of the process perhaps a narrowing of what is negotiable by a state statute. Would you agree, Bill, that this is likely to happen?

CR: ◇
I think quite the contrary. The usual phrase in state statutes governing this area of activity would be something like "salaries, hours, and conditions of employment." "Conditions of employment" in the field of education is so broad that it's almost impossible to separate what is good for the teacher from what is good for the pupil. Smaller class size, for example, is good for the teacher, of course. But it may also be very good for the child, because he has more individualized in-

struction. In education it is frequently pretty difficult to separate these items.

CR: ▣
Actually, it's inevitable that the scope of negotiations is broadened as more time passes. That's why the representative of the board has a tremendous responsibility not to broaden the whole scope of negotiations thoughtlessly without regard to the implications. A great deal of what is negotiable is determined by the precedent of what you have previously agreed to negotiate. You can't negotiate on an item last year and this year say, "Well, we don't think it's negotiable," unless the circumstances or law change.

CR: ◇
Right.

MODERATOR:
In the third incident something happened which deserves comment. Should a chief negotiator for a board immediately reject teacher team demands if he feels that they are wild, unreasonable, ludicrous?

CR: ▣
If you could get agreement from both sides that they are wild, unreasonable, then you could reject them summarily. Obviously, somebody from the other side felt that these were good demands and reasonable demands or, at least, that they were strategic demands, or they wouldn't be on the table. So, the matter of making people lose face unnecessarily comes into the picture.

I think it's well worth the time to respond categorically to each of these demands. Rather than *saying* that they are wild or ludicrous, *show* this by analyzing them and demonstrating why they can't be done or that they would destroy a program in the school system. Give some such factual reason for tearing them down, rather than just attaching a label of "ludicrous demands."

MODERATOR:
Bill?

CR: ◇
I thought it was a great list, myself.

But I agree with Bob on this. Rather than rejecting things out of hand, it would be much better to discuss them, to find out what the teachers' representatives really are after. It may be that they do not consider these demands ludicrous. There may be some sound reasons for asking for some of these items that, at first glance, appear to be pretty far out.

To reject them out of hand is only asking for trouble. Again, it's going to break down the bargaining process.

MODERATOR:
If you were negotiating for a group of teachers, and the board's chief negotiator rejected a large number of

demands out of hand, as happened in the episode, would you not have the feeling that this would work to your advantage ultimately?

CR:◇
It would, if we ran into trouble later on and had to go back to the teachers. We could use this as an example of the kind of reaction we received from the school board's representatives.

And, as a practical matter, this wouldn't cut the matter off. Any negotiator worth his salt would let the board's negotiator know he was extremely angry, leave, come back at the next session, and ask all over again.

MODERATOR:
Let's assume that this has happened. Maybe someone got a bit psyched at the demands, somebody on the board's side, and he did reject them. Where does this leave him? Where can he go? You mentioned face-saving. How can he possibly save face?

CR: ▣
Bill analyzed this correctly, I think. If these demands are indeed important to the bargaining unit, they're going to be back with them. They're not going to just drop the demands or shrink away because the chief negotiator for the board said they're ludicrous.

Conversely, I don't think the chief negotiator for the board can be mealymouthed or weak about this. At times he has to call a spade a spade, and say that this particular demand would destroy such and such a program and that there is no possibility we could agree to move in this direction. I think at times you have to be frank with the chief negotiator and the team for the other side. But you can do this without ridiculing.

CR:◇
That's right. There's another danger here, too. The parties may become polarized on issues which otherwise may have been relatively unimportant.

CR: ▣
Then, you're in real trouble.

MODERATOR:
We're in trouble now because we're out of time. Gentlemen, thank you.

— Episode 1 —

PUSHING FOR MERIT PAY

The episodes in the last two telecasts are likely to occur early in the negotiation process. The incidents in this series represent hot spots that may flare up at any time during the discussions.

Almost any item on the agenda has the potential for arousing emotions and igniting tempers. Merit pay is an issue that usually generates more heat than light, as the first simulation shows.

MANAGEMENT TEAM ■ ◆ EMPLOYEE TEAM

MBR 1: ◆

I have been around the school system long enough to report on the ineffectiveness of career recognition. This was foisted on teachers before we had negotiations. It went down to glorious defeat after a number of years, but not without great cost in morale and relationships between administrators and teachers.

I really don't think we are yet in a position to define adequately what constitutes good teaching. I was invited a couple of years ago to a workshop at the University of Pittsburgh. Invited to this workshop were supposedly outstanding principals from all over the eastern part of the United States. We were asked to view one piece of teaching. The result of this exercise was very revealing. I think it may be enlightening to the other side here.

Twenty-five principals were asked to observe and evaluate this one piece of teaching. We got such comments as this on the evaluation:

"This teacher is a real asset to the class," says one principal. Another principal says, "I can't justify having this teacher for one more day."

"This teacher has a pleasant, pleasing voice." "This teacher has a rasping, irritating voice."

"This teacher uses audiovisual aids in an extremely creative manner." "This teacher doesn't have the foggiest notion as to how to go about using audiovisual aids."

The point I am trying to make is, Who is going to decide who shall be the recipient of this increased salary? Who's going to do it? Speaking as a principal myself, I certainly don't want this responsibility. I don't think I am capable of making such judgments.

MBR 2: ◘

For quite some time now we have been thinking of ways and means to improve the career opportunities of the teachers. We feel that the plan we have presented to you is a right step in this direction. In any area where you would have people conduct some sort of action you are going to have to have some sort of an evaluation process. Your team is quite concerned as to who is going to do this. We believe, since we worked so closely together in coming up with this plan, that we can also work out these minor problems as to how the evaluation will take place and who will do the evaluating.

But I would also like to say that the Board of Education is ultimately responsible for ensuring that an innovative project is being implemented. It would be the one to determine exactly how the evaluation process will take place. But you will have input in this process.

MBR 1: ◆
Leon, you term that a minor problem? As I see it and the teachers see it, that is the crux of the entire situation regarding any kind of differentiated responsibilities and services. How is it going to be administered?

How will you identify those personnel whose roles will be defined in a differentiated type of position? We have very little in the way of job description. I am sure there will be squabbling among teachers—classroom teachers per se, other types of support personnel, counselors, library science teachers, reading specialists in other areas, hearing specialists, what have you.

I don't see it as a minor problem. The implementation of this kind of plan is a major problem with respect to its success or failure.

MBR 2: ◘
You have a good point there. But what we are really talking about now is a different responsibility as far as a teacher is concerned. We are also talking about different levels of activities and also different job descriptions.

CHR: ◆
You have yet to mention the one item in the whole proposal we object to: salary. You have tied all this innovative staffing procedure and structure to a fixed tin can of salary. The way I hear you is, If we don't get a salary differential, we don't want to have differentiated staffing.

MBR 2: ◘
Now, John, I would think that would be secondary. You know that right now our salary schedule provides for just what we have talked about during the last few minutes. We have different levels of responsibilities. I would view this as maybe adding more steps to the salary schedule, adding more lanes. It would just be a matter of preparing job descriptions to fit those various categories and then placing them on the appropriate line.

CHR: ◆
I must answer with the same answer you have given us over the years: when you have it all worked out—priced-out and functioning, practicable and feasible—come back to us and we will be glad to talk to you about it.

At the present time we have differentiated staffing. You want differentiated salaries and with sugar coating. Any way I see it, it's merit pay.

MBR 2: ◘
I disagree. It is not merit pay. Do you really believe that all teachers should be paid the same amount of money for what they do?

CHR: ◆
Under the current structure, yes. Because there is no other way of equitably evaluating.

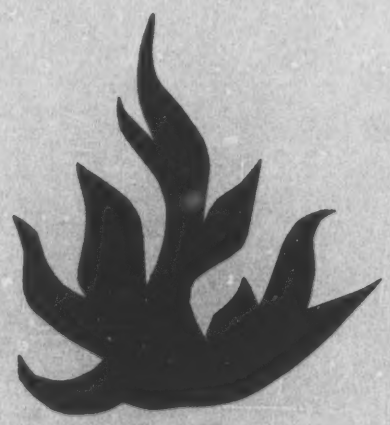
MBR 2: ◘
But, in reality, that is not the case. Right?

CHR: ◆
What do you mean?

MBR 2: ◘
We could have a beginning teacher on BA 1 doing the same thing as a teacher with her master's plus 30.

CHR: ◆
Whose fault is that? Hers?

MBR 2: ◘
No, it is not hers. But I am saying we have that. So, what we're talking about is dividing these responsibilities in a manner different from the way we now divide them and also providing more activities for teachers and utilizing teachers' talents that, perhaps, have not been utilized up to this date.



— Episode 2 —
BINDING ARBITRATION

Suggesting binding arbitration as the final step in the settlement of grievances is a potentially inflammable proposal. Boards of education and superintendents generally object to this method of ultimate resolution of grievances, as the following episode demonstrates.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ■
Let me ask you one question. You've had a lot of experience in this business, John. You've been leading this operation, and we accept you as an authority. We want to use the research you bring to us. Is it true, as my assistant has reported, that advisory arbitration is good? Or is it just as bad as binding arbitration to resolve a grievance?

CHR: ◆
I wouldn't say, Doctor, that one is more important or less important than the other. But one must, when representing people, take them whence they come and move forward. There has developed, apparently over a long period of time, a gap between the Board's promises and its ability to deliver on its promises. Consequently, the teachers want a contract that at least allows them an outside party to observe whether goods promised are delivered.

CHR: ■
We'd like you to be reasonable. Except for this first step, you have not answered my question as to whether advisory arbitration has had about the same success in resolving differences as binding arbitration. We think our statistics are your statistics, too. They're pretty close, ninety percent or something like that. Wouldn't it be reasonable for us to try out advisory first?

I can promise you that we can go back to the Board and weed out the unreasonable from the reasonable in your position, if you will use "advisory" in your terminology.

CHR: ◆
You must have heard what I said. I said that ten years ago, five years ago, eight years ago, prior to your strike, you probably could have had advisory. Then, there was still a certain amount of rapport between the two parties. This contract grew up as a result of interruption of services by the teachers. They felt that they had to strike at that time. It was the only way they could have their plans heard or heeded.

I'm saying that we don't want to have to resort to that tactic in the future to enforce the contract we agree to. I'm offering you the civilized approach to resolve disputes or grievances arising out of implementation of the contract.

MBR 1: ◘
Are you saying that you feel we'll have a strike over binding as opposed to advisory?

CHR: ◆
I'm suggesting to you that we'll have no grievance procedure. Every time the party of the second part, the teachers, feels that the delivery on the part of the Board is less than adequate, we might have to take our case to the street. That's what I'm telling you.

CHR: ■
Then, if we don't have a grievance procedure—and we can't have a grievance procedure without binding arbitration—it will lead finally to a strike? This is a threat on your part, and we'll probably have to have a strike if we can't get these things correlated?

CHR: ◆
That's right.

CHR: ■
We rather view it as a threat. (I wish you would put down in the notes that we got a little backing up on that.)

Our rationale is that we need to go to the Board of Education. The Board has run the schools for many, many years under the direction of a state law which still says they will run the schools and which has been compromised by a law saying the teachers will share in it.

This, John, is such a big step that we would like to ask you to understand us and permit us to take a short cut . . .

CHR: ◆
The sixteen articles that we have just agreed to are a diminishing of their traditional right to unilaterally adopt policy. They're already sharing it.

What we are saying is that, when it comes to implementing the broad statements in the contract we are about to sign, we have got to have some procedure that is quicker, cheaper, and, more importantly, less public than a court action or an action in the streets. That's all we are saying.

CHR: ■
If we go before the State Board with an impasse on this level of our negotiations, do you think that the arbitration panel there would rule for binding arbitration?

CHR: ◆
I do not. It's never been done before. Just like negotiations had never been done before.

CHR: ■
You think this is what we ought to do?

CHR: ◆
I'm not proposing that. I think we are mature enough to settle our own problems without calling in the state superintendent and/or going into impasse over such a mechanical item as whether or not we are going to have a grievance procedure or whether or not it's going to terminate in binding arrbitration. It's just a mechanical process for interpreting the contract. It does nothing to diminish the role of the superintendent and the Board, who traditionally have certain rights granted under law.

More Heat Than Light

— Episode 3 —

PERSONALITY CLASH

When team members engage in personal attacks they becloud and obscure real issues. They create contention and magnify minor differences. The consequences of personality clashes are serious, as this portrayal illustrates.

MANAGEMENT TEAM ■ ◆ EMPLOYEE TEAM

CHR: ◆
It's obvious that the problem really hanging up this whole discussion is that you are afraid of binding arbitration. It's not the Board of Education and their great powers. It's you, yourself.

You happen to be in charge of personnel around here. We are claiming that you are not doing a good job. What we want is somebody to come in and referee when we dispute your right to rule unilaterally. It's you, you, and you alone who are going to prevent the teachers from having equitable distribution of the rights due them.

I'm saying to you, sir, that an incompetent man, a self-seeking man, a man who is afraid of review of his actions, is not the man to be in the office that you hold.

CHR: ■
Just a minute, sir. This is a negotiation session.

I am sure that your background or your upbringing would, perhaps, lead you to make some personality attacks when you start losing something.

Yes, I am the director in the personnel area, and I think I have been here for at least a couple of years. At least you are the only one who is impugning my competency in this area.

CHR: ◆
I happen to represent six thousand teachers who have authorized me to tell you, sir, that they are not happy with the way you have been running the ship. Consequently, they are going to call either for binding arbitration to help regulate your actions in the future or for your removal because you are incompetent.

CHR: ■
How many grievances have we had?

CHR: ◆
Six.

CHR: ■
Six grievances.

CHR: ◆
With what procedure? A loaded, one-sided procedure which called for nothing but exposure of this person to future retribution.

CHR: ■
What's your nationality?

CHR: ◆
Italian.

CHR: ■
Eye-talian, huh?

CHR: ◆
Yes.

CHR: ■
Doesn't that bother you?

CHR: ◆
Not a bit. What good does it do to call me names? You have to call six thousand teachers names.

CHR: ■
You just got through calling me a name, "incompetent."

CHR: ◆
That's not a name, it's a description. It's a description of a person who is incapable, insensitive, in fact, to good administrative practice. Consequently, a contract with binding arbitration is the only way to regulate a man like you.

CHR: ■
I'm getting a little bit tired of this kind of personality attack.

CHR: ◆
It's not a personality attack.

CHR: ■
If you would like to come back to the issues, I am perfectly willing to accept that kind . . .

CHR: ◆
Forestalling agreement on the issues is the hidden agenda. The hidden agenda, sir, is that you are incompetent.

CHR: ■
What are we doing at this table?

CHR: ◆
What are we doing here?

CHR: ■
Yes.

CHR: ◆
Trying to resolve a problem and the problem right now is you.

CHR: ■
Well, don't attack me personally.

CHR: ◆
You're the problem.

CHR: ■
You mean, if I leave the team, you will be able to get along with them?

CHR: ◆
I think we would have had an agreement on binding

arbitration two weeks ago because you would not have been around to say, "Hey, watch it, you're going to expose my weak side."

CHR: ■
I think that you are an absolutely stupid individual and you are the person who ought to get out. I see no reason for us to sit around and talk with a person like you.

CHR: ◆
That's about the best suggestion you have made all day.

(Employee team members begin to walk out.)

CHR: ■
You've given me no particular rationale . . . What do you think you're doing, walking out on us?

CHR: ◆
I'm not walking out. I'm taking your suggestion. I think we ought to come back when you are in a sane and rational mood.

CHR: ■
I'll get in a sane and rational mood . . .

CHR: ◆
You're not going to rule unilaterally any more. You'll either sit here and negotiate in good faith or send somebody around who can do the job.

CHR: ■
I don't give a damn if you leave. Why don't you just go and come back when you're ready. We're not going to wait for you . . .

CHR: ◆
We'll be back when we're ready, and we'll be back to talk and not to argue.

CHR: ■
That's right. And if you want to continue calling me incompetent, I will have to take notice of that and . . .

CHR: ◆
Sue me.

CHR: ■
And bring it to the attention of the persons who might necessarily give you the chance to be relieved of your position. I don't think that the teachers want a man like you working for them.

CHR: ◆
It's pretty obvious that we have touched a nerve. We'll see you around.

CHR: ■
Well, that will be a little sooner, I guess, than I would like.

More Heat Than Light

Episodes 1, 2, and 3

The critical incidents in the program More Heat Than Light are analyzed by a representative for management and a representative for education associations. A school administrator explores the implications of these incidents from the point of view of the board of education and administration. A teachers' representative analyzes them from the viewpoint of teachers.

CR = "CRITIQUER" ▣ MANAGEMENT
CR = "CRITIQUER" ◇ EDUCATION ASSOCIATION

MODERATOR:
Emotionally charged issues or personality differences can affect more than just the negotiators themselves.

Apparently, Bill, any proposal that smacks of merit pay is incendiary. Could it be that teachers are so opposed to innovation that negotiation will result in freezing school programs?

CR:◇
No. Teachers are not opposed to innovation traditionally. In spite of what many people think, teachers in their negotiated agreements provide for flexibility, so that new programs can be tried out and so on.

But, merit pay has failed over and over again across this country, in spite of what some people would say. When teachers see this issue coming they get angry, because they've faced it so many times before.

When the issue is disguised under another name, teachers feel insulted. This generates even more heat than the initial issue of merit pay would. It makes it worse than it would have been in the beginning.

CR: ▣
I find it rather interesting that the question is phrased in terms of *teachers* being reluctant to innovate, because *boards* are constantly accused of being set in their ways, being part of the establishment, and not wanting to change.

I don't feel this accusation is just with respect to teachers either. By and large, it's a very intelligent unit you're bargaining with. If you can make your case that teachers have some things to gain by some aspects of a merit pay plan or whatever it's called, you shouldn't assume that they don't wish to innovate. Some elements of such a plan, can, perhaps, be made attractive to teachers, particularly when you can demonstrate that they're receiving something in return. Really, that's what this process is all about. There's a great deal of give and take in it.

CR:◇
Maybe someday someone will be able to work out a system which will make merit pay a practical solution to some of our problems. But, in the meantime, no solution is on the horizon.

And again, it is this insulting way of presenting merit pay disguised as something else that makes teachers angry from the beginning.

CR: ▣
It's a tremendous disservice to teachers, however, to indicate that, because generally they have a classic stance against merit pay, they are not really account-

able for what they do. I don't know of any school system that doesn't have a system of supervision where teachers have to perform up to certain standards to remain in the school system, to remain on the salary schedule, to gain advancement, and so forth. So, it may be that we are in a bit of a semantic tangle here. Teachers *are* accountable, we do supervise them, and we do expect certain things from them.

CR:◇
I'm glad you made that point, Bob, because it is important. Along with the other demands that teachers make in their annual bargaining, it is usual to find demands made for more frequent evaluation and similar things. They, too, are interested in improving themselves and their performance in the classroom.

MODERATOR:
Turning to the discussion of the grievance procedure, let me ask whether the board team took the right approach in hanging its hat on illegality with respect to binding arbitration on grievances.

CR:◇
No. I don't believe they did.

In the first place, except for one or two isolated instances in this country, binding arbitration on grievances is legal. Let me briefly go into that. You are not taking over the decision-making power of the board. Rather, you are asking for an interpretation of some agreement which has already been reached by the board. In other words, the decision has already been made. We are talking about just the application of that agreement. So the question of legality is not germane here.

Actually, the very fact that legality is raised will tend to throw teachers on the defensive. This is because in early days of negotiations before people became more sophisticated, illegality was the excuse for not doing anything at all. No matter what you wanted to do, it became illegal.

CR: ▣
For an entirely different reason I think they made a mistake. If you're really against something, and it also happens to be illegal in the eyes of, say, a state court or a state attorney general, as in this instance, you make a terrible mistake if you make the case solely on the question of legality. Courts are reversed by other courts; attorneys general are reversed by courts; state legislatures change statutes. What was illegal last year may be legal this year. If you base your whole argument on the legality, this argument may be shot away from you with one court decision.

I would turn it around. If you feel very deeply in opposition to an issue, state very frankly and quite honestly why you oppose it. Then add as a final argument: "By

the way, this is immaterial right now, because the matter's illegal." But certainly, don't hang your hat exclusively on legality.

MODERATOR:
Let's assume that legality is not an issue—in another state, for example. Would not binding arbitration take over the decision-making power of the school board and, therefore, be very difficult for them to agree to?

CR: ▣
Now you are getting into the substantive question of binding arbitration. The first thing to make crystal clear is that this discussion so far has related just to binding arbitration on grievances or interpretation of the agreement.

I think a board must go into this with its eyes wide open and very cautiously. First of all, what's in the agreement? If the agreement is tremendously broad and all-encompassing, then, literally, you will have an outside person coming into the school system and binding your school system on policy matters. If you have a narrow agreement and the grievances are limited to the agreement, then you don't have a problem of quite this magnitude. You need to go into the substance very carefully.

CR: ◇
I'd like to explore this a little more. The purpose of a grievance procedure is to resolve differences. A teacher may have something relatively small happen to him that he doesn't like. (Actually, it doesn't matter whether it's small or large.) The point of the whole grievance procedure is to resolve that complaint, to get it out of the way, so that the business of the school and the job of the teacher can go on without this thing hanging over his head forever.

By relying on binding arbitration the problem is wiped out. The slate is wiped clean and we can begin anew. To this end, binding arbitration has been found to be the means by which to conclude the grievance process.

MODERATOR:
The personality clash was a lulu. What are the consequences of a personality clash between the chief negotiators?

CR: ◇
In the first place this is dangerous for the negotiator. And I would also like to say that this particular instance was in terrible taste. You know, I've never encountered . . .

MODERATOR:
You've never seen it happen?

CR: ◇

No, not this bad. Nothing this bad. This was terrible. And I hope I never do.

But even on a lower level, such a clash presents the very great danger that relatively minor issues, those that are not going to hang up negotiations, will *hang them up. Now you have people who are polarized, not people polarized on issues. There's a great difference there.*

MODERATOR:

Issues are easier to deal with than personalities.

CR: ▣

Yes, there's no excuse for the name-calling incident in particular.

Now it's a little pious to sit here and say you should never have a personality clash, because these are emotion-filled processes. But you certainly should keep these clashes to a minimum. You may need this person from the other side later on when he goes back to try to sell the agreement for ratification. If there has been a personality conflict to the extent that there is no contact between the two chief negotiators, you could have great difficulty later on.

MODERATOR:

Things could really be tied up. I think that summarizes very, very well.

— Episode 1 —

KEEP ON NEGOTIATING

The first three series of episodes have followed the course of negotiations from their inception through initial and subsequent obstacles and hot spots. The program now moves to incidents that can occur as negotiation reaches its climax.

This series illustrates the importance of resisting the temptation to break off negotiations even though the provocation to do so seems strong and compelling. Failure to keep on negotiating may jeopardize the ultimate goal—a successful agreement.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ◆
On line 27, page 6, Article 16, I would appreciate a clarification of the words "whenever possible."

CHR: ■
John, we have been at this now . . .

CHR: ◆
I would like a clarification, Doctor.

CHR: ■
John, we've been on this thing for fourteen hours. We've completed a few things. The last seven hours we have been talking about line after line after line.

I thing we agreed with you that we would stay over for a few more hours. We are now more than seven hours over agreed time.

CHR: ◆
We are only three articles away from finishing up, Doctor.

CHR: ■
We can do that tomorrow. We've got two more days before the deadline day.

We have agreed with you up to this moment, but I'm not going to stay any longer. I think you've got to recognize that we have to get some sleep and you have to get some sleep.

CHR: ◆
I appreciate the need for sleep. My team needs sleep. But we are in a mood of agreement, and we would appreciate it if you would stay a little longer.

Let's reach agreement tonight and wrap it up. After all, we've been at this for five weeks now. We're almost home. Let's stay and reach agreement on one or two of the items outstanding.

CHR: ■
John, it's three o'clock in the morning.

CHR: ◆
At three or four or five—when people finally agree, that's a meaningful time. We're not going to be dictated to by the watch. People don't live by the clock.

CHR: ■
John, you said this four hours ago: "A little more time."

CHR: ◆
Let's, then, review at least what we have agreed to before you go.

CHR: ■
We know what we agreed to. What do we have to review it for?

CHR: ◆
I'm not too sure about that. At two o'clock, an hour ago, you knew what you agreed to. I'm not sure I knew what time it was when I agreed to certain other items. Let's just review . . .

CHR: ■
That's the point. Nobody even knows what time it is.

CHR: ◆
Well, let's find out where we are before you leave, at least.

CHR: ■
John, would you give us a secure time ten minutes from now to have this thing done?

CHR: ◆
I can't program myself or my team's responses. We might reach agreement in two minutes. What do we do for eight minutes, kill time? Let's sit down; let's keep talking; let's find out where we are, where we're going.

CHR: ■
I'm so tired that I can't make it. Now I can't even listen reasonably to you.

CHR: ◆
I'm not asking you to listen reasonably. Let us then just review what we have already reasonably agreed to. Sit down.

CHR: ■
Fifteen minutes?

CHR: ◆
Fifteen, twenty. Sit down.

CHR: ■
John, would you give us an amount of time that you want us to stay?

CHR: ◆
God, are you going to force me to caucus on the time now? Sit down.

MBR 2: ◘
I think we ought to knock it off.

CHR: ◆
Come on, Leon, you're a young, strong boy. Sit down and let's talk.

CHR: ■
Flattery. You've tried that before, and that doesn't help you any.

Would you make it in half an hour, just thirty minutes? I mean, I've given in now three times.

CHR: ◆
All right. Thirty minutes. Otherwise, I'm going to have to challenge bad faith.

CHR: ▣
Bad faith?

CHR: ◆
That's what I'll have to challenge if you walk out of here tonight. It's not demonstrating any eagerness for the Board's representative to walk out like this.

CHR: ▨
After fourteen hours you want eagerness?

CHR: ◆
I want something. Either send a younger man to do the job or . . .

CHR: ▣
I've listened to him long enough, but I'll try another half an hour.

MBR 1: ◘
We can sleep through it, anyway.

— Episode 2 —

MOMENT OF IMPASSE

The margin between agreement and impasse is often very narrow. The fate of a successfully negotiated contract may hang upon a single incident such as that illustrated in the following episode.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ◆
Thank you for staying.

Now, on Article 7, Class Size, we have to have a definite class size limit. I don't see any reason why we can't reach agreement in the fifteen or twenty minutes we have left to us on this Article 7.

CHR: ■
You are through with the other article that you wanted to talk about?

CHR: ◆
Yes, sir.

CHR: ■
I appreciate that very much. We have listened. We agreed to listen, thank you, and to go home and get some sleep. We're going.

MBR 2: ◘
I think we made it this time.

CHR: ◆
Doctor, I implore you to at least stay the time you have granted us, the thirty extra minutes. We are that close to reaching an agreement. To leave now would destroy an awful lot of work on both parts.

CHR: ■
But we listened to you.

CHR: ◆
You are listening. I want you to talk. I want you to talk. I want to discuss things. I want dialogue.

CHR: ■
We listened to you fifteen minutes. You finished the situation that you wanted to talk about.

MBR 1: ◆
I think what's happening is that you say . . .

CHR: ■
Oh, for crying out loud!

MBR 1: ◆
Hear me out, though. I think what's happening here is that you've got . . .

CHR: ■
We're going to listen to these guys for fifteen minutes. We'll stay the half hour. We're going to act in good faith, if that's what it has to be called.

MBR 1: ◆
I think we are operating here under the assumption that we've got plenty of time. We are going to be in the

same damned bind we were in last year when we were meeting on New Year's Eve until one or two o'clock in the morning. You guys are taking the point of view: "Oh, we've got plenty of time." I think we had better get on with this.

Parkinson's law operates in negotiations as it does in business. We will drag this damned thing out until the last day. Then that will drag out for another day, and we'll be meeting again on New Year's Eve. I say, let's get on with the issue of class size. It's an important issue and one that, I think, concerns all of us here tonight.

CHR:◆
We have been around this bush so much, Doctor, about class size. It's the only item that's holding us up now in solving six or seven major problems. If we can reach agreement on this item, I'm sure we can put together a package that will be salable to both parties.

I'm imploring you, sir. Give serious consideration at this time to a maximum class size by the Board. Just give us a scrap of paper with something on it that indicates that you at least buy the contract. You've had our proposition in your possession for two days, and we would like a reaction to it.

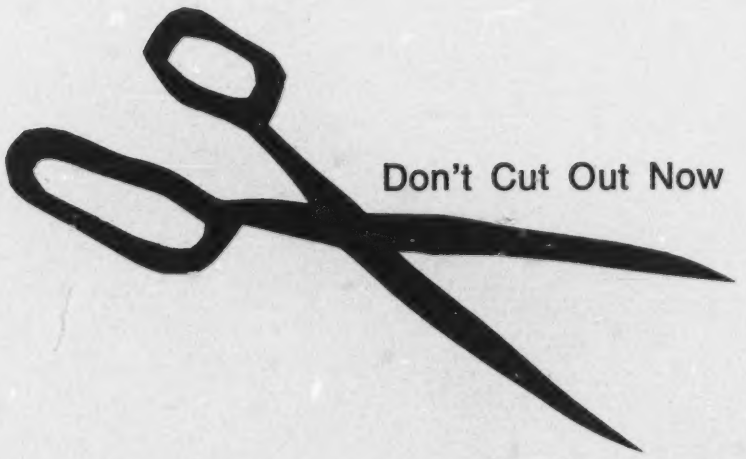
If you want I'll recall it for your edification, if you don't have it with you. If you recall, we said that in grades K through 6 there would be no more than thirty. There was some tacit approval by the Board at that time. But we haven't seen it in writing; we haven't had any expression of agreement on that.

In the areas of the secondary and high school, we said no class should exceed thirty. We have heard nothing from the Board on that.

Give us some ray of hope to take back to our people. If we solve this one, we solve six or seven others that are logjammed as a result of this.

CHR: ■
What do you think?

CHR:◆
That's it. That's all I have to offer. If you give us some statement on class size, we might be able to solve five or six other situations. I appreciate your staying, and I wish you would give it serious consideration.



— Episode 3 —

UNILATERAL NEWS RELEASE

A critical incident can arise when a news release is issued prematurely or without the knowledge and consent of both parties. This may upset the whole process and seriously endanger the possibility of signing a contract, which is clearly shown by the following episode.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR: ■
Sir, do you recognize this?

CHR: ◆
Yes, sir, I do. What's the problem?

CHR: ■
Well, I would just like to read something to you that is an absolute travesty on justice and reason and a sad commentary on the way we parted last night, having agreed on our total contract. This morning, I find in the paper the whole damned thing.

CHR: ◆
I found it there, too, and I was wondering if it wasn't . . .

CHR: ■
Here we have in the Association paper the salary schedule, the agreement on discipline, and page after page of our total agreement, word for word. We don't even have to edit this thing.

Let me read this to you. "The parties agree to consult in advance about the general and specific content of all press and public communication." And last night we also said that we were going to let our team get to the Board of Education first. That way, we wouldn't have the Board saying to us that information gets to other people before it gets to them. We've got to get it to them.

And here you come out in your Association newspaper . . . I don't see how you could get it printed this fast. We agreed last night at about seven o'clock and this came out this morning. We got it in our press this morning.

I'm sure the superintendent is going to have me on the carpet. I don't think the Board of Education is even going to listen to us when we bring this stuff to them.

I don't understand why you could do this . . .

CHR: ◆
Gordon, Gordon . . .

CHR: ■
You've given us every promise. Last night you said . . .

CHR: ◆
Control yourself. The whole . . .

CHR: ■
Control myself? Look at it. Do you recognize it?

CHR: ◆
I recognize it.

CHR: ■
It's your paper?

CHR: ◆
It's our paper.

CHR: ■
Why did you release it?

CHR: ◆
I think you are off the deep end. As I read the regulations we have agreed to here, the procedural ground rules indicate that during negotiations we would do thus and so. The signing of the agreement last night indicated to me that we had finished negotiating, that we were beyond the point of control by procedural . . .

CHR: ■
We agreed that, we understood that, and we said that we had to bring this to the Board, that we would not release it, and that your . . . I shook your hand, John. You said you would not release it and, damn it, man, you put it right in the paper last night.

CHR: ◆
Again, Gordon, you are making accusations. You are impugning our integrity without fully understanding what you agreed to.

CHR: ■
Yes, I am.

CHR: ◆
You agreed and we agreed that we would not release it to the public. Since when is our membership the public?

MBR 1: ◘
Our public is the same as your public.

CHR: ■
Out of seven thousand copies of a newspaper, I am sure that somebody is going to read it who isn't your teacher.

CHR: ◆
I would suspect so. We do have a wide readership. But the point is that we have an obligation to people . . .

CHR: ■
You are defending this?

CHR: ◆
Absolutely. We see nothing wrong in what we have done.

MBR 2: ◆
Don't you defend reportings to the Board of Education? They are your clients.

CHR: ■
The Board of Education is going to tell us . . .

MBR 2: ◆
The teachers are our clients. I don't care whether you are or not. I'm talking to you.

CHR: ◆
The agreement as I understand it was that, during the course of negotiations, press releases would be discussed prior to any release of them.

Last night we said we would not release it to the public prior to the Board of Education's receiving a copy of it. We have not yet, in good conscience, in good faith, released it to the public. All we have done is informed our membership that, as of a certain time and a certain day, certain agreements were reached with the Board of Education.

CHR: ■
This morning, before we got this paper, I told the superintendent we had made the grade and you were a fine bunch of guys.

He called up the Board members and they are coming to a special meeting tonight. Every one of them is going to walk in with this paper and say, "What are you calling upon us for? The public has already decided . . ."

CHR: ◆
They must have come by the paper surreptitiously, because we do not mail our paper directly to the Board. Consequently, if they picked one up, I don't know how they got it. I will disclaim any knowledge of how they get their information.

CHR: ■
Well, I am sure that you have some control over the editor . . .

CHR: ◆
But I think you went off a deep end, Gordon, by jumping all over us and impugning our integrity. We did not violate the gist of our . . .

CHR: ■
All right. I don't want to impugn your integrity, because I don't know if it exists. I want to say to you that I don't know whether or not we can get this through the Board of Education now.

CHR: ◆
That's your logistical problem, your strategical problem. We reached an agreement last night, subject to ratification by my team, my party, the people I represent, and by the party that you represent. We have got to get the information to our people. If the newspaper is the only means, then that's the one we had to choose to use.

CHR: ■
It would have been a little bit of common sense, intelligence, if you had said, "Okay, we're going to let them

get their Board meeting and get the agreement before these very sensitive people who believe they are running the school system and who want to make judgments."

And you come up and . . . You know what it says on the top? It says "Board and Association Agree."

CHR:◆
Well, who are you?

CHR:▣
They're going to fire me.

CHR:◆
You represent the Board. I represent the Association. I probably have less authority to put a headline like that on there. That's wishful thinking on my part. That has yet to be ratified.

CHR:▣
John, don't you think it is reasonable that we should have had a little bit of leeway so we could have gotten to the Board before . . . Oh, hell!

We're going to take such a shellacking on this that . . . What are you trying to do, get rid of me?

CHR:◆
It never entered my mind, Gordon.

— Episodes 1, 2, and 3 —

The critical incidents in the program Don't Cut Out Now are analyzed by a representative for management and a representative for education associations. A school administrator explores the implications of these incidents from the point of view of the board of education and administration. A teachers' representative analyzes them from the viewpoint of teachers.

CR = "CRITIQUER" ▣ MANAGEMENT
CR = "CRITIQUER" ◇ EDUCATION ASSOCIATION

MODERATOR:
Any situation tending to make negotiators break off talks could seriously affect the progress of successful negotiations. Bill, is it common for negotiating sessions to go on as long as the first episode depicted?

CR: ◇
Yes. Unfortunately for negotiators, this is the rule rather than the exception.

Rather than say that all long, drawn-out negotiating sessions are productive, I would say that the experienced negotiator has an ability to sense when the session is being productive and will attempt to keep that session going. When he finds that things are bogging down and nothing is being achieved, he'll then try to close off the session and go home, hoping to come back another day when he may more easily reach agreement.

MODERATOR:
Do you find that, very often, a session will be prolonged because one negotiator finds it productive while the other negotiator does not find it productive?

CR: ▣
I'm sure this is often the case. It seems to me you should avoid any regular practice of going into the wee hours of the morning where both sides become exhausted. They obviously don't do their best work when they're physically not up to it. Additionally, you need some time in between sessions with the teams to do your homework and prepare for the next session to make it more fruitful.

I think you should not be afraid to go into the wee hours of the morning if it is productive from your point of view. I don't think it should be a regular practice, however.

MODERATOR:
Should time limits for individual negotiating sessions be made a part of the ground rules?

CR: ◇
No, I don't believe so, for the same reason I stated before. There are times when going through lengthy sessions can be very productive.

On the other hand, although some ground rules may call for three-hour meetings, there may be some evenings when you're much better off if you get up and leave after half an hour. Both sides would be much better off. (At such times you have to be able to take into account the days that were good.)

So, in order to keep negotiations rolling and to keep

them productive, you should have unlimited flexibility in the time in which you're going to negotiate.

MODERATOR:
The ground rules would be sort of a straitjacket according to your philosophy. Bob, would you agree?

CR: ▣
Obviously, a two- or three-hour period would be very unrealistic. I wouldn't object to a five-, six-, or seven-hour limitation on an individual session, as long as there was provision for mutually deciding to go beyond this. The only real advantage to having, say, a six-hour limitation is that, if one team is exhausted, it may ask for a recess under the rules without being accused of walking out of the meeting.

I don't think this is a terribly serious problem. And I doubt very much if you would get an association negotiating team to agree to a very strict limitation of hours.

CR: ◇
Something Bob said is rather key here, that you should have some way of mutually agreeing to lengthen the session. That concept is important. Neither side should have the right to unilaterally rule that the session is going to end now or is going to continue.

In the preceding episode, one side was begging the other to stay, and the other side wanted to go home. I've never really seen this kind of thing occur. You can't make someone sit there and listen if he doesn't want to.

MODERATOR:
It's not wise to want him to.

CR: ◇
That's right. It's not going to be productive.

MODERATOR:
What about the incident exhibiting the moment of impasse? What type of behavior should occur when that moment of impasse becomes evident in the negotiations?

CR: ▣
First, you shouldn't fly off the handle and act irrationally. Eventually you will have to come back together to attempt to resolve the situation, either through a third party or mediator or by mutually agreeing after a cooling-off period that you should sit down again. While it's very difficult to accomplish what I suggest, you should be rather calm and businesslike.

Make certain, first of all, that you've exhausted all possibilities of reaching agreement. Secondly, make some plans for the next step—whether you're going to call in a mediator, if your state law permits you to have such a process, or whether you're going to get together next week, or next month—rather than just walking out

in a huff. This would be the worst thing that you could do.

CR:◇
In addition, you should always be certain that the door is left open for yourself and for the other side. At some point, whether in mediation, at the fact-finding, or later on after something else, the parties are going to have to get together. This should be accomplished with a minimum loss of face.

MODERATOR:
In other words, it's important not only to provide yourself with a face-saver, but to provide your opposing negotiator with one.

CR:◇
Absolutely.

CR:▣
No question about it. The chief negotiator for the board always has to remember that the day will come when, although the teams have reached agreement, he's really dependent upon the chief negotiator from the association team and its entire team to go back to the bargaining unit and sell its settlement. If he has antagonized the chief negotiator through personality conflict or on another basis to the point where they're no longer communicating, he can have a real problem later on.

The chief negotiator for the board must recognize his counterpart's position. The chief negotiator for the association has a much more complex task in communicating with his constituency. In this instance he represents six thousand people. He has problems in terms of his stature with these six thousand people. To make him lose face can be damaging to the whole process.

MODERATOR:
Have you ever been involved in a negotiating situation where it became necessary to change negotiators on either side because of an impasse? That is an extreme in relation to face-saving and holding out options.

CR:◇
Yes, it is. I have never been involved in an instance where this happened with the teachers' negotiating team, but I have seen it happen to the board's negotiating team. An administrator high up in the system was once forced to leave the scene because of personality clashes and a number of things that happened. He stated categorically that he could never accept whatever the position was. Then he found that, at the school board's direction, he had to accept that position.

MODERATOR:
It became very difficult for him to do so.

CR:◇
That's right. So, they very conveniently found a new assignment for that man. They had a new negotiator sitting on the other side of the table. It was the only way out at that point.

MODERATOR:
But, of course, it prolonged the negotiations.

CR:◇
Yes. It hindered quick resolution.

MODERATOR:
You talked a minute ago, Bob, about having to go back to six thousand people if you are the association negotiator, as Bill has found himself. Communication is an important part of selling the program either to the school board or to your constituency of teachers. Is a blackout of news releases during the negotiating period desirable, Bill?

CR:◇
That's a very difficult question, particularly for the teachers' team. On the one hand, the school board comprises a very few people. The school board's team can communicate with it rapidly and easily.

The teachers' negotiating team, on the other hand, has to communicate sometimes with thousands of people. This is tantamount to releasing a statement to the public any time you wish a communication. The teachers' team cannot in good conscience allow itself to be cut off completely from its constituency. Just as the school board team would not permit itself to be cut off from the school board, naturally. So it has to tread a very fine line. Try to keep the teachers informed without spoiling the process that's in ferment at the bargaining table.

While I would never agree to an absolute blackout of news emanating from the bargaining sessions, at the same time I would say that news releases must be issued with the utmost discretion. The idea should always be in mind that what is happening at the bargaining table is most important and must be allowed to continue.

MODERATOR:
Would you say all news releases should be joint?

CR:◇
No, this has built-in difficulties, too. I would rather that the two parties trust each other to use their best judgment and that this works out.

CR:▣
This is, indeed, a complex problem. I would have to agree that it's more of a challenge to the association than it is to the board because of the association's need to communicate with a much broader constituency. After all, a chief negotiator for a board of education

must communicate with the top administrative staff and probably somewhere between five and eleven people on the board of education. This is quite simpler than dealing with six thousand or seven thousand people in one of these large school systems.

I think the whole matter of news releases should be minimized. The more that creeps into the public press, the more difficult settlement is. Regardless of how stable we try to be, inevitably we say some things in the process of negotiation that sound rather silly the next day when you read about them in the newspaper. If you can minimize this, so much the better. But whether this is achievable, I seriously doubt. I think we just have to live with it.

MODERATOR:
A solution has to be found somewhere between having a big surprise for the teachers at the end of the negotiations, pleasant or unpleasant, and telling everything.

Gentlemen, thank you very much.

— Episode 1 —

"WATER COOLER DIPLOMACY"

The first four programs have shown the perils presented by critical incidents occurring from the initial meetings to the moment when near agreement threatens to turn into impasse. The final series portrays the crucial last moments when the final agreement is being put together.

A cardinal rule in negotiation is to avoid "private deals" by the chief negotiators behind the backs of the other team members. While the risks may seem small, the consequences are likely to be costly. The initial episode in this program demonstrates the significance of this admonition.

MANAGEMENT TEAM ■ ◆EMPLOYEE TEAM

CHR: ■
John, I've been looking through the stack of signed articles. We have got it down to the level of salary schedule, and we've got that practically done. We've got the base. We've added another column here that you wanted. We didn't add all of them, of course, but you agreed to that.

We've got everything done except the supplementary teachers' salary schedule for those persons who have not accomplished degree requirements. I think we are so close to finished that we might just as well drop that right now. Let's sign . . .

CHR:◆
What's holding us up? Is it the . . . Drop the whole salary package?

CHR: ■
No, no, just that one part. We'll go to work on it the next . . .

CHR:◆
What do you need in the way . . .

CHR: ■
We need a little more information as to the length of time that they've been here, what courses they've taken, and . . .

CHR:◆
I humbly submit that you might want to call a caucus and have one of your assistants look into those.

CHR: ■
You're not willing to say we can now hammer out this contract at the level we've already achieved and omit the supplementary teachers' salary schedule?

CHR:◆
We've come so close; let's find out what's really holding us up.

CHR: ■
We gave in on class size a little bit for you and . . .

CHR:◆
I understand that, and we appreciate every agreement that's been reached. I just think that if you need some factual data, I don't . . .

CHR: ■
Okay, okay.

CHR:◆
Let's have a caucus.

CHR: ■
Okay.

Bob, will you go out and get me the list of all the teachers, their length of service, and the degrees they have? I think we've got that in our files, but you have got to get it.

CHR: ◆
I think we ought to take a little break anyway—coffee, water, or whatever your beverage is. So let's just take a break.

CHR: ■
Five minutes?

CHR: ◆
Is that all you need, Bob?

MBR 1: ◘
Yeah, that's all right.

(Two chairmen chat apart from team members)

CHR: ◆
Oh boy, how many weeks have we been at this, Gordon?

CHR: ■
It's only been seven, but it seems like about about seventy.

CHR: ◆
You want some fresh water?

CHR: ■
Give me a little bit, will you?

I think we've got ourselves a pretty good deal here. I think we'll sell this thing to the Board of Education.

We're going to have a little trouble on this supplementary salary. These people, you know, they are fine teachers; they have been here a long time; but they just don't want to go out and get more . . .

CHR: ◆
Gordon, let's talk man to man now, while no one is around. That's the emotional crisis we have reached. If we can get over that hurdle, taking care of your veteran teacher, I think my team—with a little persuasion —might consider backing off on the class size issue.

CHR: ■
If we had not sold out on the class size, I would say that you didn't have a chance. But I'd like to have you tell me what you mean by that. It probably will cost us $15,000 to do what you want on these supplementary salaries.

CHR: ◆
It's not a cost item right now. I think it's more emotion than cost. I really believe that, if the Board could see fit to renew its . . .

CHR: ■
What do you mean by class size change? What might you want?

CHR: ◆
We might consider going back to the philosophical, intent-type statement rather than the hard, fast . . .

CHR: ■
I mean the goal.

CHR: ◆
"Working towards," "in good faith," "funds permitting." Again, if we can keep numbers in there, it will be more salable. You see what I mean? Drop a few of these "shalls" and move into the "should" category. We could probably make a deal there and still preserve what's . . .

CHR: ■
What do you mean, deal?

This is going to be a stinker when we take it to the Board, because they have said, "How can we do this?" and we don't know quite what the answer is. We would hope they can do it, but it's pretty difficult. You can't get the kids slotted in the right place, and the rooms aren't all available.

CHR: ◆
I understand that. That's why we gave you all those escape clauses, where you wouldn't have to go into double sessions or hire a teacher when it was unreasonable to do so. We recognize the problem.

So, what I'm saying is, if we move back into the philosophical class size issue and put in a few more bucks for the veteran teachers . . .

CHR: ■
I haven't talked to the team about this yet.

CHR: ◆
Me either. I think I have a feeling, though, for what is reasonable at this time. I think I could urge them to agree.

CHR: ■
What would you think of this? Suppose that, when we get these statistics, I tell you what the cost would be to move in the direction you would like to go with the supplementary salary schedule. I will say that this is a difficult thing and ask you whether, if we felt that we might do it, you would consider relieving us of pressure on class size. Then your team would meet in a caucus or just talk it out.

CHR: ◆
Yes, I could. It will come as a shock that they are not going to get a class size of meaningfulness. But I still think they are more . . .

CHR: ■
You are willing to do this?

CHR:◆
I'm certainly willing. I'm willing to try it.

CHR: ■
Okay. Good.

CHR:◆
Why don't we drink to it?

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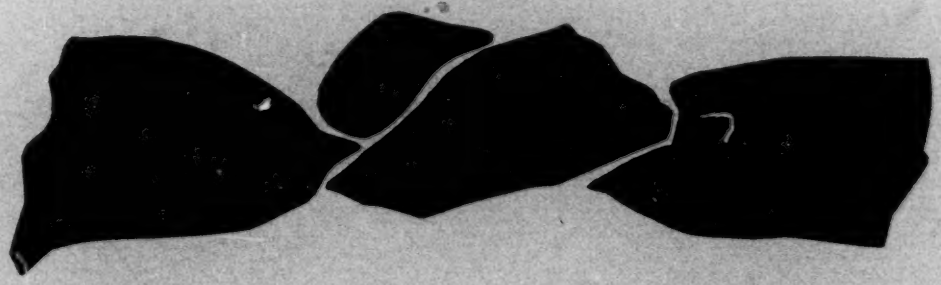
Little Risks Make Big Mistakes



— Episode 2 —

MOMENT OF SETTLEMENT

The closing minutes of a long negotiation process are critical. Being on the threshold of agreement, with the end in sight, the negotiators often try to "wrap up the package" by compromising a little "here and there" —gaining and giving so as not to jeopardize the moment of settlement.

MANAGEMENT TEAM ■ ◆ *EMPLOYEE TEAM*

CHR:◆
I would like to discuss Article 27 at this time, if you don't mind, Doctor, since we are getting down near the end of our agenda. Article 27 deals with books and other instructional materials and supplies. As you know, we have had a proposition before the Board calling for two times the current standards.

CHR: ■
Two times?

CHR:◆
We would like to double the amount of money appropriated in the budget for instructional materials and supplies.

It's not necessary for us at this time, I am sure, to go into the background, since we have been over this argument many times. It's the need. The need exists. In many cases whether or not the program reaches its objectives depends strictly upon materials and supplies.

We would like to see a statement from the Board of Education to the Association indicating that they are going to make every effort to get enough money to provide supplies to take care of our programs.

CHR: ■
We can't go two times, John. That kind of percentage change would be killed some place along the line. We might not even get the superintendent to go along with it.

But I think we've got to give in some direction. What do you say?

CHR:◆
Let me just say this one more time. When we say a hundred percent improvement, we are actually talking about fifty percent improvement. Considering the cost of living's erosion of the cost of materials, there has to be a substantial change just to buy a little bit more material.

MBR 1:◆
Not only that. The Board has been pushing teachers for more and more individualization of programs. This costs money, Gordon; this costs an awful lot of money.

Every September I make it a point to go into some of the drug stores around this area. They are crowded with people buying school supplies. We're supposed to provide free public education. We're not doing it.

CHR: ■
Give me just a second to talk to these gentlemen.

(background conversation)

CHR: ■
John?

CHR: ◆
Yes, sir.

CHR: ■
We've been at this thing now for some time. This is the last week, and we are ready. We are ready. You have made a very forceful presentation, and we'll try our very best to sell that hundred percent increase.

But we've got to finish up this job, and we've got five articles left. We have put some of them aside. We've talked them over. We know pretty well the positions. We've got . . . I think we've got to compromise.

We'll go all the way with this instructional material item. You wanted a hundred percent. We'll put in that number of thousands of dollars. We'll ask the superintendent to recommend it to the Board.

But we'd like to ask you, then, to consider our needs. If you are willing to listen to our needs, I would like to go on with saying that five articles remain. If we can agree on the five, then we'll sign them all.

CHR: ◆
Today?

CHR: ■
Five minutes from now.

CHR: ◆
Fine. What have you got in mind?

CHR: ■
You understand that, when I say we will go with a hundred percent increase or doubling of instructional materials, that's a tentative package condition. We have got to have agreement on the other areas, too, compromised or not, or the hundred percent doesn't go over anything else that we've agreed.

CHR: ◆
What did you have in mind?

I understand it. Does my team understand it?

MBR 1: ◆
Yes, I think I got it.

CHR: ◆
It's a package deal. Are you fellows willing to go along? You understand what he's proposing?

MBRS 1 and 2: ◆
Yes.

Little Risks Make Big Mistakes

— Episode 3 —

PREPARATION OF THE WRITTEN AGREEMENT

Language used in the agreement is very important. Arguing over the meaning of a single word or phrase may endanger the settlement, as the last episode in the series shows.

MANAGEMENT TEAM ■ ◆ EMPLOYEE TEAM

CHR: ■
I think this is a happy time. We have to take the agreement back to the Board, that is, to the superintendent, who will give it to them. We'll probably do this in a week. I'm real happy that we are at this level.

We gave it to our school board lawyer, who went through it very carefully. It took, he said, twelve hours to do it.

There was one word, John, I can't see the difference it will make if we change. If you will turn back to Article 1, School Board Authority. You remember that? The word that we talked about in the beginning? We agreed on "the Association recognizes that, subject to the provisions of this agreement, the Board of Education and the superintendent reserve and retain full right," etc., etc., "according to law."

Well, when our lawyer looked at the words *"subject to,"* he suggested that we ask you to initial inserting *"notwithstanding"* instead. This is, I think, maybe just legalistic. I'm not so sure I understand it myself. *"Subject to"* and *notwithstanding,"* they really are no different.

CHR: ◆
I can't believe it. Five seconds ago we had a signed agreement and were all set to leave the room and go off and get involved in the mechanics of selling it. And now the Board wants to reopen something that we don't even believe should be in the contract, which is school board authority. You've got it, but you still wanted us to beat our breasts and admit it, and we did.

Now, all of a sudden, you are coming back saying you don't like the way it's written. Maybe you'd like to say that it's a little strong. Maybe you'd like to say that the Board shall rule supreme, as it always has and will in the future.

CHR: ■
No, John. You know, this is kind of silly. What I'm really saying is that there is no difference between *"subject to"* and *"notwithstanding."*

Suppose it reads like this: "The Association recognizes that notwithstanding the provisions of this agreement. . . ." This merely sets them aside if they conflict with the right reserved for the Board by the law. It's sort of a legal question.

MBR 2: ◆
Are we going to let semantics hold up this agreement? It appears to be that way. You admit there is no difference between the two terms. Why the introduction of a new term in substitution thereof? I don't understand at this moment.

CHR: ■
I'm not so sure I understand it, either. But, as I say, I don't want semantics holding us up either. What about . . . What's another synonym? *"In context with"?*

CHR: ◆
What is the matter with the present language? That's my point, Doctor.

We've had an agreement for two years and nobody has ever raised a question. Now a legal mind is asking two groups of laymen to agree to the language when we don't know the intent of that word. They are words of art, I guess. I don't know.

CHR: ■
As you say, realistically, we have all of this authority. You didn't care, you didn't want it in, and then you said, "We don't care. You can put it in." It really doesn't mean anything anyway because we've got the authority.

We don't want to make something subject to the agreement, but to make the agreement subject to the full rights and authority of the Board of Education and superintendent under existing law. Really, that's all. That's realistic. We're just saying . . .

MBR 2: ◘
. . . that we can't do anything that's illegal.

CHR: ◆
I don't know. "Notwithstanding" *to me means nothing else matters except that you are still king. That's what* "notwithstanding" *means to me. I might be absolutely wrong, but I can't see any other definition.*

CHR: ■
You know, that's what the lawyer said *"subject to"* meant.

CHR: ◆
That you're still king?

CHR: ■
No. That the words had very little difference, but it made it just a little bit clearer, legally, in case we got into court about something.

CHR: ◆
Well, who's going to have to live under this agreement? The lawyer and you, or me and you? I think we ought to use words that we find comfortable.

MBR 2: ◆
What is the intent of every provision in this agreement if we don't use "subject to"? *What is the meaning of the agreement itself? This is the reason why we have been here for eight weeks.*

CHR: ■
It's a silly little word.

MBR 1:◆
Couldn't we turn it around and say, "I wish you would go with what we are offering you"?

We agreed on this before and here you come back, everything all wrapped up, and pull this out of the hat.

CHR: ■
We're not actually pulling out anything new. We're attempting to clarify. You remember that part of our agreement says that we can mutually agree to reopen and can clarify something while it's in our power to do so, during the time we have.

Well, in a sense we've signed and we've agreed. Now I'm saying, "Won't you mutually agree to make this—I call it a small—word change in a section of the agreement which you don't really think has any validity at all?"

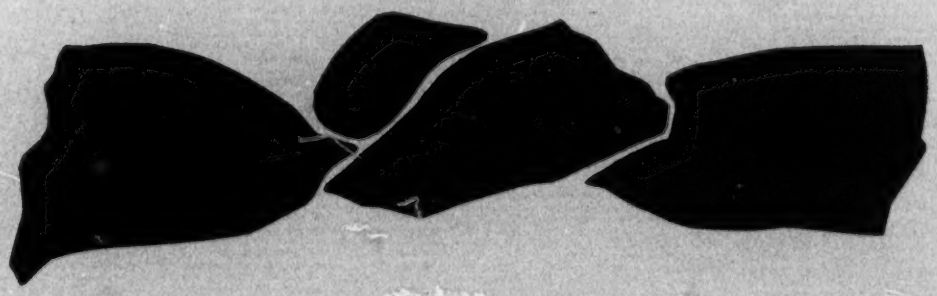
MBR 2:◆
Small words have gotten a lot of citizens into difficulty.

CHR:◆
If that phrase, "school board authority," weren't in the agreement . . .

CHR: ■
You mean you'd let us use it if we take it out of . . .

CHR:◆
No. The point is that it is now that you are bringing it up. You have insisted and we have actually asked that it be in there. I don't want to change it because for two years it seems to have done the job. I'm only seeking a rationale for removing it.

Little Risks Make Big Mistakes



— Episodes 1, 2, and 3 —

The critical incidents in the program Little Risks Make Big Mistakes are analyzed by a representative for management and a representative for education associations. A school administrator explores the implications of these incidents from the point of view of the board of education and administration. A teachers' representative analyzes them from the viewpoint of teachers.

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CR = "CRITIQUER" ◇ EDUCATION ASSOCIATION

MODERATOR:
The tactical risks illustrated in the previous incidents could lead to serious consequences near the end of the negotiation process. Is it proper for two members of opposing teams to meet separately to carry on private negotiations—"water cooler diplomacy," as it were?

CR: ◇
That's a good name for it.

No, I wouldn't want to give the idea that all of the negotiating team members should be working seperately to find a contact on the other team with whom they try to discuss things and work them out. The weaknesses of both teams are given away. This is not the kind of thing that can be done outside of the room in which negotiations take place.

On the other hand, very often agreement comes because the team spokesmen speak by themselves and reach some kind of an agreement. Or they may, at least, reach agreement on the direction in which they can go, thus breaking a roadblock and enabling them to move into an area of agreement.

MODERATOR:
Maybe you set a few ground rules for further talks or level with each other.

CR: ◇
Right. This is very important. It should be done cautiously. I would never advocate that a spokesman do this without the full knowledge of his negotiating team. This is dangerous personally for the spokesman. But, at the same time, the kind of private negotiation outside or away from the bargaining table is a very useful device if used cautiously and with skill.

MODERATOR:
Would you agree, Bob?

CR: ▣
Obviously, it has to be used very judiciously. It can be a technique with considerable risk. I think you can't emphasize too much the point that Bill made: you can't have many little deals between different members of the teams.

If the question is limited to the chief negotiators for each side, while there's no rule of thumb on this, there are times when this can work. You have to make sure that you're operating in an atmosphere of trust between the two chief negotiators.

Among other things, I wouldn't do it at the water cooler. One, this isn't going to allow enough time. And you need a little bit more confidentiality. I would prefer a conference room, one or the other's office, a restaurant, or some other place where you can get into a little bit of depth.

I certainly wouldn't rule out the possibility as long as it is undertaken with caution.

MODERATOR:
Do you feel that this water cooler or conference room diplomacy could be a good vehicle for bringing about some of the face saving we talked about earlier?

CR: ▣
Absolutely. I think it's important for both chief negotiators to know more about each other.

It is very critical that you keep your own team informed as to what you're doing. Maybe the term "deal" is a little strong. I think the most that you're probably going to say to the other chief negotiator is that "I will take this back to my team, and you may be assured that I will present such and such point of view or slant on the particular problem." But you have to leave the door open by making clear that the most you're going to do is go back and convey the problem to your team and discuss it with them.

CR: ◇
Or the negotiator might suggest to his counterpart an offer, a compromise, some alternate position which he might take which would allow the first negotiator to break the deadlock.

MODERATOR:
In other words, "Can I get you to say this, in order that I can then come back and say that? Perhaps we can get some movement going."

CR: ◇
That's it exactly.

MODERATOR:
We saw in the second episode a situation where the moment of settlement was suddenly right there. Does it really happen that quickly? With a snowball effect?

CR: ▣
I believe that was a little bit unrealistic to have disagreement, which must have been considerable, on so many items of such depth suddenly disappear, to see the end of the tunnel, and to have everything come up roses. I don't believe it happens quite that quickly.

Of course, there is a rapid acceleration toward the end, but this is probably because of many, many hours of preliminary discussion on each item. It's not quite as simple as it appeared to be.

CR: ◇
I recently read a statement by a mediator that there's a chemistry to what goes on, a fermentation that takes place. At the last session, the last few sessions, it looks

as though a great deal is happening that hasn't happened before. But, ordinarily, a great deal has happened before. All of this has been going on, has been coming to a head, and it falls in place at the last moment.

I would agree with Bob, however, that this scene is a little bit more than I've ever seen take place all at once.

MODERATOR:
Is this rapid falling into place sometimes a function of the tiredness of the team members? "Shell shock" is another word.

CR: ▣
Yes, I think this is one of the dangers of extremely long sessions' being very exhausting. You may do things, make decisions which you shouldn't have made. If it adds to the speed of settlement sometime, whether this is good or bad will depend.

MODERATOR:
It could lead to later unhappiness on the part of the board or taxpayers.

CR: ◇
I don't think this is ordinarily that much of a problem, though. Even though the negotiators are tired and may even be fed up with the whole thing, they still realize that they have a real responsibility to the people they represent. I have not seen a negotiating team give in simply because it wanted to get up and go home. This is something foreign to me.

On the other hand, I can see that, if someone has a very personal hangup that's preventing the agreement from being reached, his being tired might let him overcome his emotional problems.

MODERATOR:
In the third incident the words *"subject to the provisions of this agreement"* were changed to *"notwithstanding the provisions of this agreement."* Is that a little more than a semantic disagreement?

CR: ▣
Well, it's very hard to tell from the incident, but you should avoid this type of stumbling block at the last moment. Nerves may be frayed, and this is the type of thing that can just drive you completely apart and prevent settlement. I think you should do your planning carefully so that you don't have to introduce something of this nature at the last minute.

Obviously, there are times when you just plain goofed. There's something that somebody didn't think of until the last minute. In such a case it's better just to make a clean breast of it and say that we've just come up with something that is absolutely critical to us, rather than trying to throw a fast ball by the other team. It won't work at the last minute.

CR:◇
Especially in a case like this. This change is really a lulu. They negotiate an agreement all the way through. Everything is settled. Then a change of two words to one word would wipe out all the work they've done and make the agreement really meaningless.

This is more than what is usually referred to as a semantic change. If it is a semantic change, it's only that technically, because it deals with words.

MODERATOR:
"Subject to the provisions of this agreement" being changed to "notwithstanding the provisions of this agreement" would be, then, in your opinion, a zinger?

CR:◇
Really a zinger! A very large substantive change.

CR:▣
If it's just a semantic change, then, for the sake of getting some particular language, it is not worth jeopardizing the settlement.

If it's that important to you, then you'd better just call a halt and say, "Look, honestly, here's something that just now was brought to our attention, and we have to thrash this particular problem out." You can't minimize it when it's so important to your team.

MODERATOR:
Of course, when you say that, are you not immediately suspect?

CR:▣
I think you are. You have to make a judgment. If it's a semantic thing, I would let it go at that point. If somebody has come up with something at the eleventh hour that no one has thought of before and that's absolutely critical, then you have to face the issue. You have to make a judgment that it's worth jeopardizing the settlement.

CR:◇
This is where you return to the issue that Bob raised earlier with respect to another matter—the trust that prevails between negotiators. If a negotiator whom I trusted came to me and said, "I have this very real problem, I know it's going to bother you a great deal but I have to lay it on the line and let you know this is here," I think I would have to listen and try to work something out. I would know he wasn't trying to slip something over on us.

MODERATOR:
Gentlemen, thank you very, very much.

CLOSING COMMENTS: COMPETENCIES TO CULTIVATE

Three ingredients are required to develop competencies in negotiation: conceptual knowledge, skill at the table, and direct experience. To date, most of the effort in preparing school administrators to negotiate has been in providing information *about* negotiation. This probably is easier to do than to develop operational skills necessary for effectiveness at the negotiation table. Yet the payoff lies in being able to function well in direct negotiations. While experience—the third ingredient—is a good teacher, limitations of time may call for ways to shorten the learning period. The need, therefore, is to find other ways to gain operational skills.

Video tapes and films There is need for more audiovisual materials that demonstrate tactics and strategies in negotiation. The videotaped simulations of critical incidents in negotiation developed by the American Association of School Administrators for its 1971 convention were designed to illustrate the usefulness of this technique for increasing insights and skill in "across the table" dialogue.

Gaming materials Negotiation gaming materials have been used particularly by colleges and universities to teach skill fundamentals to students interested in becoming more knowledgeable about the process of negotiation. While gaming has been used primarily to convey conceptual knowledge, the nature of the gaming technique adds to the skill of the players as they work through the sequence of exercises.

Simulation Some sponsors of workshops and seminars in negotiation have included laboratory sessions in which table dialogue is simulated. While these exercises are fraught with some risk, in that participants may overemphasize and overact, the technique is a useful vehicle for learning *how* to do negotiating. This is especially true if simulation sessions are carefully critiqued.

Consulting Skilled Negotiators Seeking advice and consultation from experienced and successful negotiators is another useful way to gain know-how. Do's and don'ts in negotiating behavior can be learned through this "consult with the expert" process.

Negotiation Postmortems An increasing number of school systems find it helpful to convene groups of administrators, after negotiations have been completed and the contract has been successfully consummated, to analyze actions at the table. Not only do these postmortem sessions serve to brief administrators about the contents of the contract,

they also can be useful in planning strategies and tactics for subsequent negotiation sessions.

Accumulating Critical Incidents Negotiators will do well to make lists of incidents that seem critical to the successful achievement of a contract or, conversely, to the failure to attain one. Accumulated incidents can be analyzed and dissected to gain insights and learn important lessons for improving performance at the table the next time around.

Need for Know-How A fundamental issue underlies the implied proposition raised at the outset, namely, that school administrators will do well to acquire the skills to ensure greater effectiveness at the negotiating table.

Obviously, all administrators are neither temperamentally suited to nor desirous of engaging actively in negotiations. Opinions vary widely as to the roles of different categories of administrators participating directly at the negotiation table. Perhaps the most valid generalization is that each school system must determine for itself these roles. A convincing case can be made for the use of different negotiation models depending upon the conditions that prevail at any given time and circumstance.

Levels of Involvement It is possible, however, to draw some generalizations about levels of involvement in direct negotiations. The figure below illustrates some possibilities.

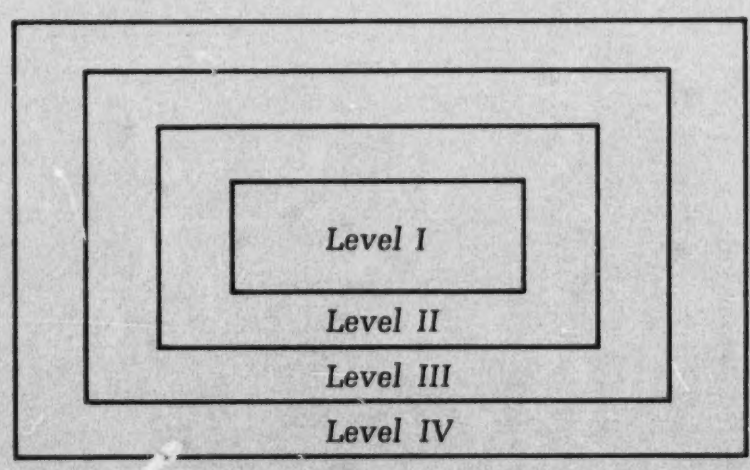

Figure 1

Levels of Involvement in Negotiation

Level I. Table Participators This is the arena of direct action. Those who participate at this level are obliged to equip themselves with knowledge, skill, and experience.

Some school systems employ a professional negotiator to conduct negotiations at the table. He may be flanked by team members, but he is the chief spokesman—the "quarterback." His colleagues may be either board of education members or school administrators or both.

Other systems develop the capability to conduct negotiations from within their own resources. The superintendent, in some instances, assumes the role of chief negotiator. Increasingly, he designates an assistant to perform this role. In either case, the team members are likely to be board members and/or other administrators on the staff.

Whoever functions at Level I of involvement needs to develop the operational skills suggested in this publication. Knowing *what* and *how* to negotiate is of the highest importance. Skill development is paramount. Its attainment may be achieved by deliberate effort, using some or all of the techniques suggested, and by repeated experiences at the table.

Level II. Consultants/Observers Many more administrators will be involved as consultants and/or observers of negotiation sessions. From time to time, as expert witnesses, they may be invited to provide information or data needed to clarify issues or to contribute to the advancement of negotiations.

This role is often recommended as being the most appropriate for middle managers, especially principals. Central office specialists also may function in this capacity.

It is less necessary for Level II consultants and observers to be equipped to negotiate at the table. However, they need to be quite familiar with the entire negotiation process. Conceptual knowledge is probably more important than operational skill. Several of the suggestions made earlier for becoming knowledgeable in negotiation are suitable for those involved in Level II activities.

Level III. Coordinators/Coaches In some school systems the superintendent delegates the role of chief negotiator to an assistant on his staff and holds himself in a liaison position between the Level I team and the board of education. When this arrangement prevails, the superintendent and, perhaps, certain cabinet-level assistants function as negotiation coordinators and coaches.

The chief negotiator regularly meets with the superintendent and his top-level assistants to plan strategies, assess ongoing developments at the table, determine counteractions, and make tactical decisions.

Admittedly, involvement at Level III is most likely to take place in larger school systems having manpower and financial resources to operate on a four-level basis. Level III involvement may not be possible in smaller systems or in those situations where the superintendent, by choice or necessity, directly assumes the chief negotiator's role at the table.

Level IV. Constituents This is the level of involvement of employee organizations and boards of education. Active negotiators (Level I), consultants and observers (Level II), and coordinators and coaches (Level III) have constituencies which they represent and to whom they are responsible. All that they do operationally is done in behalf of those whom they represent.

The principal functions of Level IV constituents consist of establishing goals to be obtained through negotiation, setting perimeters for negotiators, proposing demands and suggesting counterdemands, reacting to interim reports from the negotiating teams, and ratifying the terms of the negotiated contract.

Conclusion Collective negotiation can be made an effective decision-making process if participants at all levels of involvement "do their homework" and deliberately strive to develop the expertise required of them.

Knowledge, skill, and experience are the indispensable ingredients of expertise. The bonding elements necessary to tie these ingredients together are responsibility and integrity. The welfare of the educational enterprise and the quality of educational services produced for children are, or should be, the paramount concerns of participants at all levels of involvement.

APPENDIX

In the initial stages of developing *Critical Incidents in Negotiation* the following items were suggested by members of the Association of Educational Negotiators as suitable for illustration in videotaped episodes.

Composition of Negotiating Teams—Disputing as to who is eligible to participate on the negotiating teams on both sides of the table.

Makeup of Board Committee—Insistence by members of teacher negotiating team that they wish to negotiate with *entire* board of education.

Intrusion of Board Members in Direct Negotiations—Inexperienced board members taking initiative in direct negotiations with teachers, circumventing prerogatives of a professional negotiator employed to conduct collective negotiations with teachers.

Who Speaks for Negotiating Council? (California)—Infighting on council as to who speaks for the council, leaving the meetings in a state of constant indecision.

Recognition of an Organized Group—Confusion (in absence of guidelines and procedures) as to which group or groups may be recognized before beginning to negotiate.

The Agenda—Consequences of not having a carefully prepared agenda and adhering to it in negotiations.

Challenging Authority of Chief Representative of Both Sides (California)—Problems arising when negotiating council doubts that board representative really speaks for board and vice versa.

"Ground Rules"—Teams get into big hassle about ground rules for conducting negotiation.

Role of Principal—Consequences of excluding principals from involvement in negotiation, especially when matters under consideration affect their prerogatives.

Taping Negotiation Sessions—One team wants to tape negotiating sessions; the other does not. What to do?

Limits of Authority of Negotiators—Difficulties arising when limits of bargaining power of either teachers' or board's negotiator are unclear.

Nonnegotiable Items—Disputes about what is and is not negotiable, e.g., instructional procedures.

Transfer Problems—Argument as to whether transfer policies are or are not open to negotiation.

Promotions—Members of board team insist that promotions are to be determined only by the administration and board. Teachers demand that promotions be subject to grievance procedures.

Pushing for a Merit Pay Program—Board team seeks to negotiate for a merit pay program; teacher team refuses.

Transfers—Insistence by members of teacher team that the final say on transfers of employees is a subject for resolution by the grievance procedure, not a prerogative of the board of education.

Renewals of Contracts of Probationary Employees—Demand by teacher team that failure to renew contracts of probationary employees be subject to grievance procedure.

Introduction of New Demands—Consequences of introducing new demands after negotiations have gotten under way.

Immediate Rejection of Teacher Demands—Effect of immediate rejection by the board's negotiator of teacher team demands he deems wild, unreasonable, even ludicrous.

Keep on Negotiating—Chairman of board team announces that it is time to recess negotiating session (it is 3 a.m. —both sides had previously agreed not to go beyond that

hour). Chairman of teacher team begins a tirade, demanding that negotiations continue.

Personal Attack—Chairman of teacher team makes a personal attack on chief negotiator for board. What action should latter take?

Personality Clash—Opposing spokesmen clash. This beclouds and obscures the real issues, creating contention where none previously existed. Consequences?

"Unloading" Personal Feelings—Delaying and prolonging negotiations by "unloading" personal feelings about either the school system or teachers' organization.

Loss of Tempers—Both sides getting angry and engaging in exchange of invectives. What to do?

Escalating Tension—Nit-picking, flying words, accusations building up tension. What to do?

Availability of Funds—Teacher team instructed by state education association to question accuracy of administrative team's estimate of available funds.

"Nothing New To Offer"—Effect of board team's informing teacher team, after several meetings, that the board has "nothing new to offer."

The Walkout—Using as a strategem the act of walking out of a negotiation session, leaving the other team to wonder if the action is temporary, real, or what.

Talking Out of Turn—Effect upon other team when a member of the other negotiating team negates a point made by its chairman.

Disagreement on Initialed Items of Tentative Agreement—Consequences of disagreeing about meaning of initialed items of tentative agreement.

Preparation of Written Agreement—Generating delays in completion of written agreement due to disputes about language (semantics) of the agreement.

Reintroduction of Material—Attempting to reintroduce matter already decided through arbitration.

Overcoming Strike Threat—Reacting to threatened strike action.

The Arbitrator's Award—To accept or not to accept. Implications for ensuing year.

At Fact-Finding Session—Board and teacher representative responding disappointedly and without full understanding of significance of final award.

Binding Arbitration—Teachers wanting and board resisting the use of binding arbitration of grievance procedures and impasses.

Moment of Impasse—Behavior of the parties at this moment generating issues that may make resolution of impasse difficult.

Unilateral News Release—Repercussions of one team's releasing news unilaterally.

Statement to Press—Effect of a member of one of the teams telling the press (or public) his private views or revealing goals of his team prematurely.

Violation of "Ground Rules"—Parties losing sight of final objective of negotiation process: reaching an agreement.

Overuse of Caucus—Unusual reliance upon caucus or constant passing of notes in lieu of caucus.

Being in an Embarrassing Position—Through uncertainty, the teacher team gets itself in an embarrassing position. What to do? Move in for "the kill" or help them get "off the hook"?

"Under the Table Deals"—Two members of opposing negotiation teams are meeting separately and outside of regular meetings attempting to carry on "private negotiations."

"Log Rolling"—Deliberately clouding the picture by raising invalid or unrealistic bargaining demands in order to gain concessions from opposition.